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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 724

ALBERT A. CARMICHAEL, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE STATE OF ALABAMA, ET AL., APPELLANTS,

vs.

SOUTHERN COAL & COKE COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA

FILED FEBRUARY 8, 1937.

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[fol. 1]

IN UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA

No. 691. In Equity

SOUTHERN COAL & COKE COMPANY, a Corporation, Plaintiff,

v.

ALBERT A. CARMICHAEL, as Attorney General, et al., Defendants

AMENDED BILL OF COMPLAINT

To the Honorable Judge of the District Court of the United States for the Middle District of Alabama:

Southern Coal & Coke Company, a corporation organized and existing under the laws of the State of Delaware and a citizen of said state, brings this its bill of complaint against Albert A. Carmichael, individually, and as Attorney General of the State of Alabama; J. L. Kaufman, individually, and as Chairman and a member of the Unemployment Compensation Commission of the State of Alabama, and Lucien C. Brown and James A. Lipscomb, each individually, and as members of said Unemployment Compensation Commission, and Bibb Graves, individually, and as Governor of the State of Alabama, all citizens of said state, whose residences are hereinafter stated, and complains and says:

First. The plaintiff is and at all times herein mentioned was a corporation duly organized and existing under the laws of the State of Delaware and duly qualified to do business in the State of Alabama in accordance with the laws of the State of Alabama. Plaintiff's principal office and place of business in the State of Alabama is in Shelby County, Alabama.

[fol. 2] Second. Defendant Albert A. Carmichael is the Attorney General of the State of Alabama. Defendant J. L. Kaufman is the Chairman and a member of and defendants Lucien C. Brown and James A. Lipscomb are the associate members of the Unemployment Compensation Commission of the State of Alabama. Defendant Bibb

Graves is Governor of the State of Alabama. The defendants are the officials of the State of Alabama charged with the administration of the Unemployment Compensation Law of said State of Alabama as amended, herein referred to as the Alabama Act, and hereinafter more particularly described. Defendants are all citizens and residents of the State of Alabama and either now reside in Montgomery, Alabama, or as such officials of said State have their respective offices for the conduct of business of said State with which they are charged in the City of Montgomery, Montgomery County, Alabama, in the Middle District of Alabama. Each of the defendants is over the age of twenty-one years.

Third. The amount involved in this controversy, exclusive of interest and costs, exceeds the sum or value of Three Thousand ($3,000) Dollars.

Fourth. This controversy arises under the Constitution of the United States and under the Constitution of the State of Alabama and is based upon the claimed and asserted unconstitutionality in whole or in part of said Unemployment Compensation Law, as amended, and upon the claimed and asserted unconstitutionality in whole or in part of the Federal Social Security Act (hereinafter referred to as the Federal Act, and hereinafter more particularly described), the said Federal Act being the indispensable base of the State Act, and the State Act being wholly incapable of operation unless the Federal Act is valid, operable and constitutional. Plaintiff seeks herein both an interlocutory and a final judgment suspending or restraining the enforcement, operation and execution of the Alabama Act, as amended, by restraining the action of the officials of the [fol. 3] State of Alabama above enumerated as defendants herein from the enforcement and execution thereof.

Fifth. In 1935 the Legislature of the State of Alabama enacted an Act, approved September 14, 1935, a true copy of which is hereto attached, marked "Exhibit A," and made a part hereof as though fully set forth herein. Said Act was first introduced in said Legislature in the Senate of said State as Senate Bill No. 395. Thereafter, in 1936, said Legislature enacted three certain amendments to said Alabama Act, all of which were approved April 21, 1936, true copies of which are hereto attached, marked respectively

"Exhibit B," "Exhibit C," and "Exhibit D," and made a part hereof as though fully set forth herein. Said Act and said amendments thereto are together hereinafter referred to as the Alabama Act.

Sixth. Since prior to 1915 plaintiff has been continuously engaged in the State of Alabama in the business of mining coal and selling the same in the markets of the United States. Plaintiff avers that all coal sold by it is delivered to the buyer F. O. B. cars at the railroad station, Boothton, Alabama, and that all its employees herein mentioned engage solely in mining and preparing coal for the market and perform no duties in interstate commerce. Plaintiff now has invested a large sum of money, to-wit, over $100,000 in an extensive plant for mining and selling its products at Boothton, Shelby County, Alabama, and in lands and mines and mining equipment in said County. In the conduct of said business over the period of its existence, plaintiff has acquired a substantial and valuable good will with customers in the State of Alabama and throughout the United States. Now and during the year 1935 and at all the times herein mentioned, plaintiff has employed in its operations, [fol. 4] to-wit, three hundred employees in the State of Alabama. Plaintiff has operated its mines and business during the entire period of its existence. Coal production in Alabama is of a seasonal nature. As an illustration of this, the average work days of plaintiff's operations (which is fairly consistent with the operations of other companies in Alabama engaged as is plaintiff in the mining and sale of domestic and steam coal) for the past six years have been 193 days in 1930, 206 in 1931, 116 in 1932, 186 in 1933, 214 in 1934, and 159 in 1935; and the average days that the operations have been idle have been 83 work days in 1930, 70 in 1931, 160 in 1932, 90 in 1933, 50 in 1934, and 105 in 1935. The fewer days of operation and the larger number of idle work days in 1932 and the first part of 1933, were due to the fact that at this time plaintiff temporarily reduced its employment personnel by approximately forty men (this reduction being the direct result of the loss by the company of one of its valuable accounts because of the fact that this customer changed its fuel requirements from coal to oil) and the decrease of average work days operated and increase of average work days idle for the year 1935 were due to the fact that a general strike existed

in the coal fields of Alabama, including the employees of the plaintiff, for fifty days during this year. Plaintiff avers that notwithstanding the seasonal nature of its business, the average labor turnover of the plaintiff during the same years with the exception of an increase in 1932 and 1935 (due to the loss of the account and the strike above referred to) has been approximately five per cent. Plaintiff avers that the small per cent. of labor turnover in its business is due to two causes, (a) the fact that a large percentage of plaintiff's employees have been continuously in its employ for a great many years and when there has occurred a cessation of work due to the seasonal nature of the business, or for other causes, instead of discharging such [fol. 5] employees, it has been and will continue to be the policy of the plaintiff to divide the work that is available among all employees; (b) because of the fact that a large number of plaintiff's employees have been recruited from the farm population and during times of inability to work in the mines, secured the additional needed support to prevent them from becoming public charges or supported by relief or other funds due to unemployment, by farming and gardening as an additional means of support for themselves and their families during times of unemployment. Plaintiff further avers on information which he has received and believes that the same situation exists in the coal industry in the State of Alabama as a whole; that a large number of the miners of Alabama have been recruited from the farm population in the general vicinity of the mines and make use of these farms as bases during the times of unemployment.

Seventh. Plaintiff avers that under the terms of the Alabama Act, from January, 1936, through August 31, 1936, plaintiff became liable to the Commission in the sum of $3,519.17, which amount in accordance with the contribution instructions of the Commission and in accordance with the order of the Commission, became due and payable to the Commission on or before the 5th day of October, 1936. Plaintiff further avers that the Commission demanded of the plaintiff prior to the filing of the bill of complaint herein the payment of said amount and declined to make any further extensions in reference to said payments.

Plaintiff further avers that in accordance with the order

of the Commission there will become due and payable from the plaintiff to the Commission on the 15th day of each month, beginning with the 15th day of October, 1936, the amounts of contributions for the immediately preceding month, based upon the schedule of contributions as pro- [fol. 6] vided for in said Act as applied to its total pay rolls for said months. Plaintiff further avers that its pay rolls have been and will continue to be substantially the same in amount that they have been during the year 1936.

Eighth. In 1935 the Seventy-fourth Congress of the United States adopted an Act (HR 7260-Public-No. 271) which was approved by the President of the United States August 14, 1935, the short title of which by Section 1105 thereof is the Federal "Social Security Act" and which is hereafter for convenience referred to as the Federal Act. Full reference is hereby made to the Federal Act as if the same were fully set forth herein. The provisions of the Alabama Act have been approved by the Social Security Board established by Title VII of the Federal Act, hereinafter for convenience referred to as the Federal Board, as conforming to the provisions of the Federal Act, as provided by Title IX, Section 903 of the Federal Act.

Ninth. Pursuant to the provisions of Section 9 of the Alabama Act, the Governor of the State of Alabama appointed defendants Kaufman, Brown and Lipscomb the members of the Unemployment Compensation Commission of Alabama, hereinafter for convenience referred to as the State Commission, and designated defendant Kaufman as Chairman thereof. The State Commission has organized itself, with numerous employees and is proceeding to the enforcement of the Alabama Act. It has opened and is maintaining offices in the Cities of Montgomery and Birmingham, Alabama. It has spent and is continuing to spend large sums of money in publicizing the provisions of the Alabama Act and of the Federal Act and in attempting to enforce the Alabama Act. It has prepared and published various instructions, rules and regulations, forms for returns, and other matters and things which it attempts to [fol. 7] require to be done and complied with in respect of the Alabama Act. It has ordered and directed plaintiff and other employers of labor in the State of Alabama, without reference to whether or not the Alabama Act purports

to apply to them, to furnish to the Commission on forms provided for the purpose, so-called "Employer's Status Reports." The State Commission has further demanded and is continuing to demand information of plaintiff and of other employers of labor in the State of Alabama with respect to pay rolls, papers and records of plaintiff and such other employers, including a weekly report and record of all persons performing any service for the reporting employers during 1935, information as to the nature and type of business conducted by such employers and as to their affiliation with any other employers, companies, holding companies or subsidiaries and as to the names, agents, wages and contract provisions in respect of their contracts with their employees. The State Commission has further notified plaintiff and other employers of labor in the State of Alabama that it requires and will continue to require of them the filing with the State Commission of monthly reports, and the initial payment on or before September 21, 1936, which date was advanced by the Commission until on or before October 5, 1936, of the amounts of contributions the payment of which by the plaintiff is provided for by the Alabama Act and monthly payments thereafter of the amounts of such contributions and that the State Commission intends to and will continue to enforce the provisions of the Alabama Act. Defendants have notified plaintiff and such other employers of labor that defendants intend to impose upon them and enforce the penalties imposed by the Alabama Act for violation of any of its provisions, and that in the absence of compliance with the provisions of the Alabama Act they will not issue the certificates with [fol. 8] respect to credits under the provisions of the Federal Act and that they will in accordance with the provisions of the Alabama Act proceed to enforce and administer it, including the deposit of contributions paid under the Alabama Act in and with the Unemployment Trust Fund provided for in Title IX, Section 904, of the Federal Act.

Plaintiff attaches hereto, marking the same "Exhibits E," "E-1" to "E-10", inclusive and making the same by reference a part hereof, full and correct copies of various papers which have been prepared and distributed to employers in the State of Alabama by said Commission pursuant to said Act. Plaintiff avers that copies of each and all of said papers were sent or delivered to it under the direction of said Commission.

Tenth. Plaintiff pays substantial amounts of State and county ad valorem taxes on its properties in the State of Alabama annually and also pays to the State of Alabama annually substantial amounts of other forms of taxes aggregating annually the sum of $7,300, and in addition to the other capacities in which plaintiff brings this suit, it also brings this suit as an interested taxpayer to the State of Alabama.

Eleventh. The State Act is inextricably interlocked with, and absolutely dependent upon, the Federal Act, and is not intended to and cannot operate without the Federal Act, and is incapable of administration, application or enforcement unless the Federal Act be valid and constitutiona-. Under the provisions of the Federal and the State Act, all funds collected under the State Act must immediately upon their collection be transmitted to agencies created by the Federal Act for deposit in a trust fund created by the Federal Act, and the funds so collected, transmitted and deposited can be disbursed only if, when and as they are released, and their disbursement agreed to by the said agencies so created by the Federal Act in accordance with the provisions of said Act. The only funds which have [fol. 9] been or are now available for the expenses of administering the State Act, which are very heavy, is an appropriation of Federal funds provided by the Federal Act for such purpose. The salaries of the Alabama Unemployment Compensation Commission, the wages and salaries of their numerous employees, representatives, field agents, auditors, inspectors, clerks and other job-holders; the expenses of maintaining the offices of the said Commission and its branches and other agencies and all other expenses requisite to the administration of the said Alabama law are payable solely from Federal funds provided by the Federal Act, and the amount of moneys to be provided for the administration of the Alabama Act is determinable solely by the Federal agencies created by the Federal Statute and such amounts are made available to the Alabama authorities only when and as the said Federal agencies determined to make them so available. Plaintiff is informed and believes that at the present time, when the system is only in its initial stage, such expenditures for administration of the Alabama Act are being made at the rate of approximately $— per annum. The Federal Act

appropriates for each fiscal year, after the fiscal year ending June 30, 1936, the sum of $49,000,000 to be expended upon the administration of State unemployment Acts, such as the Alabama Act, and plaintiff is informed and believes that when the system is in full operation, the pro rata portion of such administrative appropriation allocable to the State of Alabama from Federal funds will be in the neighborhood of $1,000,000 per annum. The Alabama Act is, in many other respects, so interlocked with and interdependent upon the Federal Act that it is utterly without effect or meaning and incapable of operation if the Federal statute be a void legislative enactment.

The said Federal statute, as plaintiff is informed and believes, is unconstitutional and void as an attempt by Con- [fol. 10] gress to shape, control and regulate purely internal and domestic affairs and policies of the states, to-wit, matters of compulsory insurance, pensions, minimum wages and relationships between employers and employees in no wise engaged in commerce between the states. The said Federal Act imposes heavy exactions, under the guise of taxes, upon employers and employees as the necessary means for the intended control by Congress of compulsory insurance, pensions and other internal affairs of the states; seeks to prescribe for the states policies of idleness pensions, minimum wages, compulsory insurance, and other matters of purely internal and domestic concern to the states; and said act in its intent and in its effect sets up, as an inescapable inducement to the respective states to submit to the imposition upon them of such Federally-determined domestic policies, a system by which on the one hand the states are coerced so to submit by reason of heavy taxation and on the other hand there is purchased, with staggering sums of Federal funds, submission to Federal regulation in respect of the said subjects, which said subjects are reserved to the States by the Constitution of the United States. The said exactions imposed by the Federal Act are not in fact taxes but are called taxes for the purpose of enabling the Congress, under the pretense of levying a tax, to exert a power not granted to Congress by the Constitution of the United States but reserved by the Tenth Amendment to the States.

Plaintiff is further informed and believes that the said Federal Act is unconstitutional not only on account of its utter departure from the prescribed orbit of Federal activities but also by reason of the fact that the due process

clause of the Fifth Amendment to the Constitution of the United States is violated by said statute, in that it seeks to adjust and regulate the relationship of employer and employee and to deprive them of their liberty of contract, and to interfere with their free control of the details of their own business and personal conduct, which matters no legislative body has constitutional power to control.

[fol. 11] Twelfth. Plaintiff is further advised by its counsel and believes and therefore avers that the Alabama Act and the contributions thereby sought to be exacted are unconstitutional, void, discriminatory and offensive and repugnant to the provisions of the Constitution of the United States in the following respects and for the following several reasons:

(a) The provisions thereof which require plaintiff and others similarly situated to withhold from compensation contracted by it to be paid to its employees prior to the enactment of the Alabama Act are in violation of the provisions of Section 10 of Article I of the Constitution of the United States which prohibits the State of Alabama from passing any law impairing the obligation of contracts.

(b) The provisions thereof which measure the liability of employers to comply therewith by the status of each employer during any twenty or more calender weeks in the year 1935 violate the provisions of Section 10 of Article I of the Constitution of the United States which prohibits the State of Alabama from passing any ex post facto law.

(c) The provisions thereof which require compulsory contributions by employers and employees, including this plaintiff, violate the Fifth Amendment to the Constitution of the United States in that they provide that plaintiff, its employees and others similarly situated shall be deprived of their property without due process of law.

(d) The provisions thereof which require compulsory contributions by employers and employees, including this plaintiff, violate the Fifth Amendment to the Constitution of the United States in that they provide for the taking of private property of plaintiff and its employees and others [fol. 12] similarly situated, for public use, without just compensation.

(e) The provisions thereof which require compulsory contributions by employers and employees, including this plain-

tiff, violate the Fourteenth Amendment to the Constitution of the United States in that they provide that plaintiff, its employees and others similarly situated, shall be deprived of their property without due process of law.

(f) The provisions thereof which require compulsory contribution by certain employers and employees while failing to require such contributions from all employers and employees in the State of Alabama deny to plaintiff, its employees and others similarly situated the equal protection of the laws and thereby violate the Fourteenth Amendment to the Constitution of the United States.

(g) The provisions thereof which require certain employers and employees, including this plaintiff and its employees, to comply therewith while exempting other employers and employees in the State of Alabama from compliance therewith violate the Fourteenth Amendment to the Constitution of the United States in that those required to comply, including this plaintiff and its employees, will have abridged unlawfully their privileges and immunities in the free conduct of their businesses and occupations and in their making of free contractual obligations.

(h) The provisions thereof which require compulsory contributions by employers and employees, including this plaintiff, violate the Constitution of the United States in that the contributions therein sought to be exacted are not taxes for the support of the Government of the State but in [fol. 13] effect amount to the expropriation of money from one group for the benefit of another with no referenee to the regulation of the matter in which both groups are interested and in respect of which there is no power of legislative regulation.

(i) The provisions thereof which require compulsory contributions by employers, including this plaintiff, violate the Fifth Amendment to the Constitution of the United States in that the benefit payments to be made from the unemployment compensation fund therein provided for will be at a given rate while the contributions of individual employers to build up the fund will be at a disparate rate, thereby treating all employers as a single employer and depriving them of their property without due process of law.

(j) The provisions of the said State statute are violative of the sections of the Constitution of the United States

above referred to in the respects above set out, and also in the following respects:

There is nothing in the character of plaintiff's business which warrants singling out the plaintiff and others similarly situated to bear as an employer (rather than a taxpayer along with all other tax-payers) the burden and responsibility of unemployment in the State of Alabama, either as to employees of others or as to theoretical unemployment originating in a theoretical shut-down of plaintiff's plant or operations.

Therefore, the said State Act simply expropriates large sums of money from plaintiff to be delivered as an enforced contribution to certain favored persons or classes of persons.

(k) The said Act seeks to regulate the rate of wages to [fol. 14] be paid by plaintiff to its employees by prescribing, in effect, a minimum wage to be paid employees of plaintiff during periods of interruption of actual service, thereby invading plaintiff's liberty of contracting with its employees, in violation of the provisions of the Constitution of the United States above referred to.

Thirteenth. Plaintiff is advised by its counsel and believes and therefore avers that the Alabama Act and the contributions thereby sought to be exacted are unconstitutional, void, discriminatory and offensive and repugnant to the Constitution of the State of Alabama in the following several respects and for the following several reasons:

(a) The provisions thereof which require certain employers and employees, including this plaintiff and its employees, to comply therewith violate Section 6 of the Constitution of the State of Alabama in that in effect they deprive those required to comply therewith, including this plaintiff and its employees, of liberty and property without due process of law.

(b) The provisions thereof which measure the liability of employers to comply therewith by the status of each employer during any twenty or more calendar weeks in the year 1935 violate the provisions of Section 22 of the Constitution of the State of Alabama which prohibit the Legislature of the State from passing any ex post facto law.

(c) The provisions thereof which require plaintiff and others similarly situated to withhold from compensation

contracted by plaintiff to be paid to its employees prior to the enactment of the Alabama Act are in violation of Sec- [fol. 15] tion 22 of the Constitution of the State of Alabama which prohibits the Legislature of the State from passing any law impairing the obligation of Contracts.

(d) The provisions thereof which require compulsory contributions by employers and employees, including this plaintiff, violate Section 23 of the Constitution of the State of Alabama in that they provide for the taking of private property of the plaintiff, its employees and others similarly situated, for public use without just compensation.

(e) The provisions thereof which require compulsory contributions by employers and employees, including this plaintiff, violate Section 23 of the Constitution of the State of Alabama in that they provide for the taking of private property of the plaintiff, its employees and others similarly situated, for private use without compensation and without the consent of the owners.

(f) The provisions thereof which require compulsory contributions by certain employers and employees, including this plaintiff, while exempting other employers and employees in the State of Alabama from making such contributions violate Section 23 of the Constitution of the State of Alabama in that in effect they provide for taxation or forced subscription against or by certain citizens for the benefit of certain other citizens.

(g) The provisions thereof violate Section 35 of the Constitution of the State of Alabama which provides "That the sole object and only legitimate end of government is to protect the citizen in the enjoyment of life, liberty, and property, and when the government assumes other functions it is usurpation and oppression" in that the scheme and plan thereof is to restrict rather than to protect the enjoyment [fol. 16] of life, liberty and property by the citizens attempted to be made subject thereto and fails to operate equally with respect to all citizens of the State of Alabama and citizens of the United States domiciled in the State of Alabama.

(h) The provisions thereof which violate the declaration of rights in the Constitution of the State of Alabama violate Section 36 of said Constitution which provides

"That this enumeration of certain rights shall not impair or deny others retained by the people; and, to guard against any encroachments on the rights retained, we declare that everything in this Declaration of Rights is excepted out of the general powers of government, and shall forever remain inviolate."

(i) The provisions thereof which provide for the exercise by the State Commission of its discretion with respect to the percentage of compulsory contributions attempted to be exacted thereby violate Section 42 of the Constitution of the State of Alabama which provides that "The powers of the government of the State of Alabama shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are legislative, to one; those which are executive, to another; and those which are judicial, to another," and amount to the attempted delegation by the Legislature of the legislative functions committed to it by the State Constitution.

(j) The provisions thereof which provide for the exercise by the State Commission of its discretion with respect to the percentage of compulsory contributions attempted to be exacted thereby violate Section 43 of the Constitution of the State of Alabama which provides that "In the government of this state, except in the instances in this Con- [fol. 17] stitution hereinafter expressly directed or permitted, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end that it may be a government of laws and not of men."

(k) The provisions thereof which provide for the exercise by the State Commission of its discretion with respect to the percentage of compulsory contributions attempted to be exacted thereby violate Section 44 of the Constitution of the State of Alabama which provides that "The legislative power of this State shall be vested in the Senate and House of Representatives."

(l) The provisions thereof which authorize and direct the State Commission to cooperate in all necessary respects with the appropriate agencies and departments of the Fed-

eral Government in the administration of the Alabama Act and to comply with all reasonable Federal regulations with respect to such administration in the expenditures of moneys violate said Sections 42, 43 and 44 of the Constitution of the State of Alabama in that they amount to an attempt by the Legislature to unlawfully delegate matters of exclusive state sovereignty to Federal officials and agencies.

(m) The provisions thereof which require the State Commission to pay over all compulsory contributions collected under its supervision to the unemployment trust fund provided for by Title IX, Section 904, of the Federal Act, violate the provisions of the Constitution of the State of Alabama in that there is no delegation in said Constitution to the legislative or executive departments of the State government of any power to pay over moneys exacted from the [fol. 18] citizens of the State or from citizens of the United States within the State to the United States or to any agency or official of the United States, particularly inasmuch as the Federal Act provides and contemplates that moneys received from the State of Alabama and deposited in said unemployment trust fund may be used for the benefit of citizens of the United States who do not reside in the State of Alabama, and the Alabama Act in this respect in effect attempts to levy an unlawful exaction of tax for the benefit of others than citizens of the State of Alabama or citizens of the United States domiciled in the State of Alabama.

(n) The Legislature in adopting said Act violated the provisions of Section 45 of the Constitution of the State of Alabama in that said Act contains more than one subject and the title to said Act shows on its face that it contains more than one subject.

(o) Said Act was first introduced in the State Senate of the Legislature of Alabama and its adoption by the Legislature of Alabama violated Section 70 of the Constitution of the State of Alabama which provides that "All bills for raising revenue shall originate in the house of representatives."

(p) The provisions of said Act violate Section 72 of the Constitution of the State of Alabama which provides that "No money shall be paid out of the treasury except upon

appropriations made by law, and on warrant drawn by the proper officer in pursuance thereof" in that the appropriation attempted to be made of all moneys in the unemployment administration fund at any time to the Unemployment Compensation Commission is not an appropriation of moneys of the State of Alabama in accordance with said [fol. 19] Section 72 of the Constitution of the State of Alabama for payment over to the unemployment trust fund provided for by the Federal Act, and such appropriation would in any event be invalid as an appropriation for purposes other than purposes of the State government.

(q) The provisions thereof violate Section 93 of the Constitution of the State of Alabama which provides "nor shall the State lend its money or its credit to any individual, association or corporation" in that in effect the Alabama Act seeks to lend the money and credit of the State to the Federal Board and to the individual beneficiaries, whoever they may be, whether or not citizens of the State or citizens of the United States residing in the State, of said unemployment trust fund provided for by the Federal Act.

(r) The provisions thereof violate Section 212 of the Constitution of the State of Alabama which provides that "The power to levy taxes shall not be delegated to individuals" and the Alabama Act attempts to delegate such power unlawfully to the State Commission.

(s) The provisions thereof violate Section 213 of the Constitution of the State of Alabama which provides that "After the ratification of this Constitution, no new debt shall be created against, or incurred by this State, or its authority, • • •" in that the provisions of the Alabama Act with respect to payment of benefits amount to the incurring of a new debt by the State in violation of said Section 213.

(t) The provisions thereof violate Section 214 of the Constitution of the State of Alabama which provides that "The [fol. 20] Legislature shall not have the power to levy in any one year a greater rate of taxation than sixty-five one-hundredths of one per centum on the value of the taxable property within this State" in that the illegal exactions sought to be required to be paid thereunder upon the value of the compensation paid by plaintiff and others similarly situated exceeds said sixty-five one-hundredths of one per cent.

(u) The provisions thereof violate Section 217 of the Constitution of the State of Alabama which provides that "The property of private corporations, associations and individuals of this State shall forever be taxed at the same rate" in that the Act seeks to tax property of a like nature that is compensation paid for services with respect to certain citizens and not taxing at the same rate or at any rate the same or similar property of other citizens.

(v) The provisions thereof violate the Constitution of the State of Alabama in that they are so interwoven with the provisions of the Federal Act both with respect to the illegal exactions thereupon sought to be levied against citizens of the State of Alabama and citizens of the United States domiciled in Alabama and with respect to the administrative features of both Acts as to amount to a surrender by the State of Alabama of its sovereignty to the United States and to officials and agencies of the United States.

(w) The provisions thereof violate the Income Tax Amendment to the Constitution of the State of Alabama, Article XXII, General Acts of 1933, page 116, in that they fail to provide exemptions or credits by said amendment prescribed and as to the employees of plaintiff and other employees similarly situated seek to assess or levy an income tax not on net income but on gross income in violation [fol. 21] of said Amendment.

Fourteenth. Plaintiff is informed and believes and therefore avers that one of the impelling, if not the only impelling reason why the Alabama Act was adopted by the Legislature of Alabama is that under the provisions of Title IX of the Federal Act taxes are levied on employers of eight or more persons, with certain classes of employment excepted therefrom, and a credit of 90% of the tax levied on such employers is allowed to taxpayers on the amount of taxes paid by them into an unemployment fund if the State adopt a law containing the provisions enumerated in Section 903 (a) of the Federal Act and such State law is approved by the Federal Board. The provisions with respect to such credit are contained in Sections 902 and 909 of the Federal Act.

Fifteenth. Plaintiff is informed and believes and therefore avers that the sole motive and object of the Federal Congress in providing in Title IX of the Federal Act for

the credit of 90% of the taxes or contributions paid into an unemployment fund under such a state law so approved by the Federal Board was to coerce and virtually force each state to adopt laws conforming to the will of Congress as to what is proper and suitable legislation for each of the several states, thereby depriving the states of their freedom of action in determining for themselves necessary and desirable laws for their residents or persons doing business within their borders with reference to matters as to which the states have sole and exclusive jurisdiction and which are concerns reserved to the states under the Constitution of the United States. Plaintiff further avers that only, [fol. 22] to wit, thirty days intervened between the time the Federal Act was adopted by Congress and the time that the Alabama Act was adopted by the Legislature of Alabama, and plaintiff is informed and believes and therefore avers that this short lapse of time, together with the fact that the provisions of the Federal Act and the provisions of the Alabama Act apply to substantially the same classes of persons and exempt substantially the same classes of employment and the fact that the provisions with respect to the administration of the two Acts and the fact that Title III of the Federal Act includes appropriations to be given free to such states as might adopt a law containing substantially the provisions prescribed by said Title III, which provisions are contained in the Alabama Act, conditioned upon the approval of such state acts by the Federal Board, show that the Legislature of Alabama was coerced or compelled or strongly influenced by the provisions of the Federal Act in adopting the Alabama Act. Section 5½ of the Act of the Legislature of Alabama approved by the Governor April 21, 1936, Exhibit "B" hereto, provides as follows:

"It is expressly provided that in the event the Supreme Court of the United States shall hold Title Three or Title Nine of the Federal 'Social Security Act' approved by the President August 14th, 1935, unconstitutional or inoperative for any reason whatsoever, then this Act shall become void, inoperative and of no effect and all payments of levies, contributions, taxes or pay-roll deductions made hereunder and then remaining unexpended shall be returned ratably to those making such payments and if such payments contain in whole or part deductions from the remuneration of em-

ployees, such employees shall in turn be repaid ratably such deductions as are returned on their account to their employers."

Sixteenth. Neither the Alabama Act nor any other statute of the State of Alabama provides for refund of taxes or contributions wrongfully exacted from plaintiff and its em- [fol. 23] ployees and from other employers and their employees similarly situated in the event the Alabama Act is declared unconstitutional or void, except to the extent set forth in said Section 5½ of the Act of the Legislature of Alabama approved April 21, 1936, Exhibit "B" hereto, which in effect provides for refund of only so much of the payments made under the Alabama Act as may not be expended at the time therein provided and which in effect, even as to that balance, is inoperative as the Federal Act contains no provisions for the repayment to the State Commission or to the State of Alabama of the moneys which by the terms of the Alabama Act are required to be deposited by the State Commission in the Unemployment Trust Fund provided for by the Federal Act. Plaintiff is informed and believes and therefore avers that there is no suit now pending before the Supreme Court of the United States to determine the validity of Title III or of Title IX of the Federal Act and that it will be a long period of time, to wit, three years before said Court will decide the validity thereof. Plaintiff is advised by counsel and believes and therefore avers that Title III and Title IX of the Federal Act and the Alabama Act are each part of one comprehensive plan to exact from substantially the same classes of employers and employees domiciled and doing business in Alabama taxes or contributions to be handled and expended pursuant to one general plan and scheme and that in determining many of the questions presented as to the validity and constitutionality of the Alabama Act under the Constitution of the United States and under the Constitution of the State of Alabama it is necessary to construe the provisions of the Federal Act and also necessary to determine whether Title III and Title [fol. 24] IX of the Federal Act are constitutional. Plaintiff is advised by counsel and believes and therefore avers that both Title III and Title IX of the Federal Act are unconstitutional, void, discriminatory and offensive and repugnant to the provisions of the Constitution of the United

States in the following several respects and for the following several reasons:

(a) The provisions of Title III of the Federal Act violate Section 1 of Article I and Paragraph 18 of Section 8 of Article I of the Constitution of the United States in that Section 302 (a) illegally delegates to the Federal Board legislative powers vested by the Constitution solely in the Congress and such attempted delegation fails to prescribe and limit definite standards under which the powers attempted to be delegated to the Federal Board may be exercised by it. Said Board is directed to determine and certify for payment to each state meeting the requirements of the Federal Act such amount of the Federal appropriation found by it to be necessary for the proper administration of the law during the fiscal year in which the payment is to be made but it is provided that such determination shall be based upon (1) the population of the State, (2) an estimate of the number of persons covered by the state law and of the cost of proper administration of such law—both matters of reasonably definite determination—and (3) such other factors as the Board finds relevant—a matter unlimited and undefined by any standard and purely in the arbitrary and uncontrolled discretion of the Federal Board.

(b) The provisions of Title III of the Federal Act violate the Constitution of the United States in that by the appropriations therein contained and the conditions with respect [fol. 25] to legislation therein required of the respective states Congress has sought to coerce and compel the legislatures of the several states to adopt specific legislation and thus to govern the concerns reserved to the states by the Constitution.

(c) The provisions of Section 303 (b), Title III, of the Federal Act violate the Constitution of the United States in that investing in the Federal Board the right to refuse any state the benefit of the appropriations made by Section 301 of said Title III and to refuse certifications to the Secretary of the Treasury required as a condition precedent to payment from such appropriations upon the sole and discretionary determination of the Federal Board as to whether there has been legal denial of unemployment compensation payments under the provisions of the state law or compliance with the State law and thus to govern the concerns

reserved to the states by the Constitution and to substitute the determination of a Federal agency for the determination of the state courts upon the construction, operation and rights arising under a state law.

(d) The provisions of Title IX of the Federal Act, Section 903, violate the Constitution of the United States in that thereby and by the other provisions of said Title IX Congress has sought to compel and coerce the legislatures of the several states to adopt specific legislation and to surrender control of state funds to a Federal agency and thus to govern the concerns reserved to the states by the Constitution.

(e) The provisions of Title IX of the Federal Act, Section 903 (b), violate the Constitution of the United States in that investing in the Federal Board the discretion to certify or [fol. 26] not to certify to the Secretary of the Treasury any state which the Board finds has changed its law so that it no longer contains the provisions specified in the Federal Act, or as with respect to a particular taxable year failed to comply substantially with any such provision, upon the sole and discretionary determination of the Federal Board that Congress has violated the foundation principles of the dual system of government under the Constitution of the United States and attempted to govern the concerns reserved to the states by the Constitution of the United States and to substitute the determination of a Federal agency for the determination of the state courts upon the construction, operation and rights arising under a state law.

(f) The provisions thereof which require so-called taxes to be paid by employers and employees, including this plaintiff and its employees, violate the Fifth Amendment to the Constitution of the United States in that they provide that plaintiff, its employees and others similarly situated, shall be deprived of their property without due process of law.

(g) The provisions thereof which require so-called taxes to be paid by employers and employees, including this plaintiff and its employees, violate the Fifth Amendment to the Constitution of the United States in that they provide for the taking of private property of the plaintiff, its employees and others similarly situated, for public use without just compensation.

(h) The provisions thereof which require the payment of so-called taxes by certain employers and employees while failing to require such payments from all employers and employees in the United States violate the Constitution [fol. 27] of the United States in that they deny the equal protection of the laws to the plaintiff, its employees and others similarly situated.

(i) The provisions thereof violate the Tenth Amendment to the Constitution of the United States in that they seek to regulate the affairs of the respective states over which the United States has no control under the provisions of the Constitution and to govern the concerns reserved to the states by the Constitution.

(j) The provisions thereof which seek to levy taxes thereunder violate the Constitution of the United States in that the taxes therein sought to be levied are not taxes for the support of the Government authorized by the Constitution of the United States but illegal exactions designed to expropriate money from one group of citizens of the United States for the benefit of another group of citizens of the United States in contravention of the powers delegated by the Constitution of the United States to the United States to levy taxes.

Seventeenth. Said Act is by its terms designed to regulate in an unconstitutional manner matters concerning the life, liberty and property of citizens of the United States and the taxes thereby levied denominated excise taxes or income taxes are not such but merely exactions in an attempt through the taxing power to regulate concerns over which the United States has no control.

Eighteenth. Plaintiff will suffer great and irreparable injury from and because of the matters herein complained of if the Alabama Act is enforced by defendants against plaintiff, for which injury it has no adequate remedy at law and no redress or remedy except in a court of equity [fol. 28] unless the injunctions prayed for herein are granted, for the following separate and several, among other, reasons:

(a) If plaintiff recognizes the validity of the Alabama Act and remits or pays to the State Commission the compulsory contributions demanded by the Commission of plain-

tiff under the terms and provisions of the Alabama Act, it will (1) suffer the loss of a large sum of money, to wit, many thousands of dollars; (2) be compelled to undergo the expense of and loss of large sums of money which plaintiff will necessarily expend in keeping the voluminous records and reports required by the State Commission in its administration of the Alabama Act, the total amount which will be substantial but at this time is unascertainable; (3) to be forced to furnish to the State Commission information with respect to its employees and their relationship to it which constitutes and is a valuable property right of plaintiff and which both plaintiff and its employees desire to be kept confidential between them; (4) have added to the cost of plaintiff's products by reason of the compulsory contributions imposed by the Alabama Act and additional expense incident thereto substantial cost which will seriously interfere with plaintiff's ability to successfully compete with manufacturers of similar products located in states which have not enacted laws similar to the Alabama Act and lose business which will jeopardize plaintiff's further continuance in business; (5) subject itself to liability for repayment to its employees of the amounts with interest required to be withheld by it out of the compensation of said employees under the terms and provisions of the Alabama Act together with the large cost incident to the defense of a multiplicity of suits by such employees and the expense and annoyance of such a multiplicity of suits instituted [fol. 29] for the purposes of the collection of such sums.

(b) If plaintiff declines to recognize the validity of the Alabama Act and refuses to remit or pay to the State Commission the compulsory contributions demanded by the commission under the terms and provisions of the Alabama Act, plaintiff will among other things (1) subject itself to the attempted imposition of the separate and several compulsory contributions, taxes, penalties, exactions and discriminations imposed upon plaintiff by the Alabama Act; (2) subject itself to the attempted imposition of fine or imprisonment or both for violation of any provision of the Alabama Act for which a penalty is not thereby expressly provided for; (3) subject itself to the attempted assessment and collection of the separate and several compulsory contributions or taxes and the attempted imposition of the penalties, exactions and discriminations imposed upon plaintiff by the

provisions of the Federal Act; (4) be deprived of the credits provided by the Federal Act for those employers who have been certified to the Secretary of the Treasury of the United States as having complied with the provisions of the Alabama Act; (5) to be harassed and put to large expense in defense of an unseemly multiplicity of suits in the attempted collection of the compulsory contributions or taxes sought to be levied by the Alabama Act; (6) be harassed and put to large expense in defense of an unseemly multiplicity of suits in the attempted collection of the so-called excise and other taxes sought to be levied by the Federal Act.

(c) If plaintiff pays in accordance with the provisions of the Alabama Act and the demand of the State Commission the compulsory contributions or taxes provided for and [fol. 30] demanded, it will be without any adequate legal remedy to recover or recapture the amounts so paid because (1) the Alabama Act provides no remedy of any kind for the recovery of any such amounts; (2) no other law of the State of Alabama provides a remedy of any kind for the recovery of such amounts; (3) no appropriation has been made out of which and with which any refunds or recoveries of such amounts may be paid; (4) the Alabama Act and the demands of the State Commission thereunder requiring separate and periodical payments, each separate payment would be a separate transaction, which would involve a multiplicity of demands and suits against the plaintiff in an attempt to recover the same; (5) the financial condition of the State of Alabama is such that if plaintiff should pay such amounts and sue to recover the same, it would not realize on any judgment therefor; (6) by the Alabama Act the State Commission is required immediately upon receipt of any payments thereunder to deposit or invest the same in the Unemployment Trust Fund provided for by the Federal Act, thereby removing the amounts so deposited or invested from beyond the jurisdiction of any court, State or Federal, functioning in the State of Alabama; (7) the Federal Act does not contain any remedy which authorizes suits for the recovery of any funds deposited or invested in said Unemployment Trust Fund; (8) if judgment should be recovered by plaintiff against the defendants for any amounts paid by plaintiff to any of the defendants pursuant to the Alabama Act and the demands made upon plaintiff by the defendants thereunder, such judgment could not be collected against the defendants individually because plaintiff is informed and believes and

therefore avers that they and each of them are financially unable to respond in damages to such judgments; (9) should [fol. 31] any money be made available by the State of Alabama by appropriations for the repayment of such funds, such appropriations will be subject to the Budget Amendment of the Constitution of the State of Alabama, thereby reducing the amount of recovery, to-wit, 50% or more; (10) plaintiff not only would be without a forum in which to maintain an action against the Federal Government or any department thereof, but there would be lacking any privity of any kind between plaintiff and the Federal Government or any department thereof in reference to the contributions collected from plaintiff and turned over to the Federal Board; (11) by virtue of the said Budget Amendment and the statute executory thereof, all charges, expenses and appropriations of the State Government (except certain classes of charges to which plaintiff's claim does not belong, constituting preferred charges) are prorated and all such charges and appropriations are conditional, contingent and lapsable, and the only moneys paid to those of the non-preferred class are prorated moneys remaining unexpended at the end of each fiscal year, all such appropriations, claims and charges automatically expiring at the end of each such fiscal year; (12) plaintiff will be without remedy against the State of Alabama or the said Commission because none of the moneys paid by plaintiff will remain in the hands of the State or said Commission and plaintiff will be without remedy against the Government of the United States, or any officer, representative or department thereof, because there will be no privity between plaintiff and the said Government of the United States, or any of its officers, representatives or departments, and because there is no law under which plaintiff would have the right to make any enforcible demand upon the Federal Government, or any officer, representative [fol. 32] or department thereof, for restitution, Plaintiff will, therefore, be without any efficacious method of recovering back sums so paid under an unconstitutional enactment because dealing with two Governments and being without a fixed and definite right as against either and being without a known remedy as against either,—there being no ascertained principle of law by which plaintiff's rights are determinable as being against the one Government or the other.

Nineteenth. Plaintiff is informed and believes and therefore avers that there are in the State of Alabama a large number, approximately, to-wit, 1,000, of employers of eight or more employees, who occupy the same relation and status to the Alabama Act and to the Federal Act as does the plaintiff and that the question herein involved is one of common or general interest to all of such persons, all of whom, together with the plaintiff, constitute a class so numerous as to make it impracticable to bring them all before the court. Wherefore plaintiff, of its own volition and also at the request of approximately, to-wit, 100 members of such class, brings this suit for the whole of such class. In the event plaintiff is not authorized by this court to bring and prosecute this suit for the whole of the class above referred to, it invites the intervention of such employers as party plaintiffs herein and joins in their request for intervention in such cases wherein petitions are filed praying for such right of intervention and where the facts set forth in such petitions show that the petitioners in all respects occupy the same relationship and status towards this court and towards the subject matter of this suit as is the status and relationship of plaintiff.

Twentieth. Plaintiff is informed and believes and therefore avers that there are in the State of Alabama a large [fol. 33] number of employers of eight or more employees situated similar to the plaintiff with respect to the Alabama Act and the Federal Act who will bring suits similar to this suit for the purpose of having the validity and constitutionality of the Alabama Act and of the Federal Act determined by courts of proper jurisdiction and that there will result, unless injunctions herein prayed for are issued, a multiplicity of suits with their consequent heavy cost and annoyance.

Twenty-first. Defendants have threatened to perform and continue to perform all the duties imposed upon them by the Alabama Act, including the collection of the compulsory contributions thereby sought to be levied and attempted enforcement of the imposition of the penalties, exactions and discriminations imposed thereby upon the plaintiff and its employees and other employers of labor and their employees similarly situated, and have stated that suits and complaints which defendants are authorized by the Alabama Act to bring against those who have not fully complied there-

with will be brought and prosecuted and that the penalties provided by the Act for violation of any of its terms will be attempted to be enforced by them. Unless the injunctions herein prayed for are granted, the bringing of such suits and their prosecution will work upon the plaintiff and others similarly situated irreparable injury.

Therefore, plaintiff prays that your Honorable Court will make parties defendant herein the defendants hereinabove named and cause subpoenas to issue from this Honorable Court to each and every of the defendants, requiring them to appear in answer to this bill in equity within such time [fol. 34] as may be fixed by this Honorable Court, and that the Judge of this Court call to his assistance to hear and determine the application of plaintiff for an interlocutory injunction in the premises two other judges, at least one of whom shall be a Supreme Court Justice or a Circuit Judge, as required by the laws of the United States in such cases, and set down the hearing hereof at such date as may be fixed by your Honorable Court upon five days' notice of such hearing to the defendants as provided by the statutes of the United States in such cases made and provided, and that upon such hearing this Court will grant an interlocutory injunction suspending and restraining the enforcement and operation or execution of the Alabama Act and of the compulsory contributions, fines, imprisonment, taxes, penalties, exactions and discriminations therein provided for by restraining the action of the defendants and each of them from the enforcement and execution of the Alabama Act and of such compulsory contributions, fines, imprisonment, taxes, penalties, exactions and discriminations, and that upon a final hearing of this cause a permanent injunction of like effect be issued and granted against the defendants and that plaintiff have such other and further relief in the premises as to this Court may seem just. Plaintiff further prays that this Court decree and adjudge that the question involved herein is one of common or general interest to many persons constituting a class so numerous as to make it impracticable to bring them all before the Court and that this suit be considered, adjudged and decreed as being a suit brought by the plaintiff for itself and for the whole of such class.

Plaintiff prays for such other, further and more general

[fol. 35] relief, as in equity and good conscience it may be entitled to, and it will ever pray.

Borden Burr, Niel P. Sterne, Marion Rushton, Attorneys for Plaintiff. Benners, Burr, McKamy & Forman, Knox, Acker, Sterne & Liles, Rushton, Crenshaw & Rushton, of Counsel.

Footnote.—Defendants are required to answer the foregoing bill of complaint and each and every paragraph thereof, but answer under oath is hereby expressly waived.

Borden Burr, Niel P. Sterne, Marion Rushton, Attorneys for Plaintiff.

[fols. 36–36-1] Exhibit "A" to Bill of Complaint

Alabama General Laws

(Regular Session, 1935)

No. 447) (S. 395—Stephens

An Act

To create a system of unemployment compensation; to provide for an unemployment compensation fund; to provide for contributions to such fund; to provide for benefit payments from such funds; to provide eligibility conditions for such benefit; to provide for the settlement of benefit claims; to provide for judicial review of disputed benefit claims; to create an Unemployment Compensation Commission and to provide for its appointment, compensation and prescribe its powers and duties; to provide for the appointment and compensation of other employees and the maintenance and other expenses of such Commission; to accept the benefit of an Act of Congress, approved June 6, 1933, entitled "An Act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system and for other purposes"; to provide for the creation of an Alabama State Employment Service and to prescribe its powers, duties and functions; to authorize reciprocal benefit arrangements with other states or the Federal Government; to prohibit the waiver of rights

and benefits arising hereunder; to limit attorney's fees in cases arising under this Act; to regulate alienation of benefits; to provide penalties for failure to comply with or violations of this Act; to establish an Unemployment Administration Fund; to appropriate funds to maintain the same; and to retain the right to amend or repeal this Act.

Be it enacted by the Legislature of Alabama:

Section 1. Short Title—This Act shall be known and may be cited as the "Unemployment Compensation Law".

Section 2. Definitions—The following words and phrases, as used in this Act, shall have the following meanings unless the context clearly requires otherwise: (a) "Benefits" means the money payable to an employee as compensation for his wage losses due to unemployment as provided in this Act. (b) "Commission" means the Unemployment Compensation Commission established by this Act, or its authorized representative. (c) "Contributions" means the money payments to the State Unemployment Compensation Fund required by this Act. (d) Eligibility. An employee shall be deemed "eligible" for benefits for any given week of his partial or total unemployment (occurring subsequent to any required waiting period) only when he is not disqualified by any provision of this Act from receiving benefits for such week of unemployment. (e) "Employee" means any [fol. 36-2] person employed by an employer subject to this act and in employment subject to this Act. (f) "Employer" means any person, partnership, association, corporation, whether domestic or foreign, or the legal representative, trustee in bankruptcy, receiver, or trustee thereof, or the legal representative of a deceased person, who or whose agent or predecessor in interest has employed at least eight persons in employment subject to this Act within each of twenty or more calendar weeks in the year 1935 or any subsequent calendar year; provided that such employment in 1935 shall make an employer subject on January 1, 1936, and such employment in any subsequent calendar year shall make a newly subject employer subject for all purposes as of January first of the calendar year in which such employment occurs. In determining whether an employer (of any person in the state) employs enough persons to be an "employer" subject hereto, and in determining for what con-

tributions he is liable hereunder, he shall, whenever he contracts with any contractor or subcontractor for any work which is part of his usual trade, occupation, profession, or business, be deemed to employ all persons employed by such contractor or subcontractor on such work, and he alone shall be liable for the contributions measured by wages paid to such persons for such work; except as any such contractor or subcontractor, who would in absence of the foregoing provisions be liable to pay said contributions, accepts exclusive liability for said contributions under an agreement with such employer made pursuant to general commission rules. All persons thus employed by an employer (or any person) within the State, in all of his several places of employment maintained within the state, shall be treated as employed by a single "employer" for the purposes of this Act; provided, moreover, that where any person, partnership, association, corporation, whether domestic or foreign, or the legal representative, trustee in bankruptcy, receiver, or trustee thereof or the legal representative of a deceased person either directly or through a holding company or otherwise, has a majority control or ownership of otherwise separate business enterprises employing persons in the state, all such enterprises shall be treated as a single "employer" for the purposes of this Act. Any employer subject to this Act shall cease to be subject hereto only upon a written application by him after a finding by the commission that he has not within any calendar week within the last completed calendar year employed eight or more persons in employment subject hereto. Any employer (of any per-
[fol. 36-3] son within the state) not otherwise subject to this Act shall become fully subject hereto upon filing by such employer with the commission of his election to become fully subject hereto for not less than two calendar years, subject to written approval of such election by the commission. (g) "Employment" means any employment in which all or the greater part of the person's work (within the continental United States) is or was customarily performed within this State, under any contract of hire, oral or written, express or implied, whether such person was hired and paid directly by the employer or through any other person employed by the employer, provided the employer had actual or constructive knowledge of such contract. Such employment shall include the person's entire employment (in all

states, including the District of Columbia). In the case of all other persons employed partly in this state and partly in other states, the commission is authorized, with the approval of the Governor, to enter into reciprocal arrangements with other states as to the extent the employment of such persons shall be included under this definition. The term "employment" shall not apply to: (1) Agricultural labor; (2) Domestic service in a private home; (3) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States; (4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother; (5) Service performed in the employ of the United States Government or of an instrumentality of the United States; (6) Service performed in the employ of a state, or political subdivision thereof, or an instrumentality of one or more states or political subdivisions; (7) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual. (h) "Employment Office" means that free public employment office (operated by the state) or branch thereof nearest to the employee's place of residence or employment, unless otherwise prescribed by the commission. (i) An employee's "full-time weekly wage" means the weekly earnings such employee would average from his employment if employed at the "hourly rate of earnings" and for the "full-time weekly hours" applicable to such employee. (1) The applicable [fol. 36-4] "hourly rate of earnings" shall be determined by averaging the employee's actual earnings for at least three hundred hours of employment by his most recent employers. (2) An employee's "full-time weekly hours" shall mean the standard maximum weekly hours which can be lawfully be worked by the employee (in the employment in question) under any code of fair competition or under any applicable state law specifying lower maximum weekly hours or agreement. Where there is no code, law or agreement applicable, the commission shall determine the employee's full-time weekly hours by averaging his weekly

hours for all calendar weeks (in at least the past three months) in which he worked thirty hours or more, or by such equitable method as the commission may by general rule prescribe for determining a full-time standard of not less than thirty weekly hours for benefit purposes. In the case of an employee who is found by the commission, at the time he becomes eligible for benefits, to be unable by reason of physical disability or by reason of continuing personal obligations (other than employment) to work half the full-time weekly hours which prevail in such establishment for full-time employees, the commission shall determine his full time weekly hours for benefit purposes by averaging his weekly hours for all weeks (in at least the past three months) in which he worked. (j) "Fund" means the Unemployment Compensation Fund established by this Act, to which all contributions and from which all benefits required under this Act shall be paid. (k) "Partial Unemployment". An employee shall be deemed "partially unemployed" in any calendar week of partial work if he fails to earn in wages (and/or any other pay for personal services, including net earnings from self-employment) for such week at least one dollar more than the amount of weekly benefits for total unemployment he might receive if totally unemployed and eligible. (l) "Payroll" means the total amount of all wages payable by the employer to his employees, commencing with wages payable for employment occurring after the employer becomes newly subject to this Act. (m) "Total Unemployment". An employee shall be deemed "totally unemployed" in any calendar week in which he performs no wage-earning services whatsoever, and for which he earns no wages (and no other pay for personal services, including net earnings from self-employment), and in which he cannot reasonably return to any self-employment in which he has customarily been engaged. (n) "Unemployment Administration Fund" means the Unem-
[fol. 36-5] ployment Compensation Administration Fund established by this Act. (o) "Wages" means every form of remuneration for employment received by a person from his employer, whether paid directly or indirectly by the employer, including salaries, commissions, bonuses, and the reasonable money value of board, rent, housing, lodging, payments in kind, and similar advantages. (p) "Waiting-period-unit" means a period (for which no benefits are pay-

able but during which the employee is in all other respects eligible) consisting of either one week of total unemployment or two weeks of partial unemployment, required as a condition precedent to the receipt of benefits for subsequent unemployment, as prescribed in this Act. (q) "Week" means calendar week. (r) "Week of employment" means each calendar week (occurring at least one year after contributions first became generally due under this act from employers then subject hereto, and occurring after any probationary period or periods required hereunder) within which the person in question performed any employment subject to this Act for any employer subject to this Act; provided, however, that any week (occurring within the customary school vacation periods) in which an employer employed an employee who attended a school, college or university in the last preceding school term, shall not be counted as a "week of employment" in determining the benefit rights of such employee under this Act.

Section 3. Unemployment Compensation Fund—(a) Fund. There is hereby created the Unemployment Compensation Fund, to be administered by the commission without liability on the part of the state beyond the amounts paid into and earned by the fund. This fund shall consist of all contributions and money paid into and received by the fund as provided by this Act, of property and securities acquired by and through the use of moneys belonging to the fund, and of interest earned upon the moneys belonging to the fund. (b) Withdrawals. The fund shall be administered in trust and used solely to pay benefits, upon vouchers drawn on the fund by the commission pursuant to general commission rules and no other disbursement shall be made therefrom. Such rules shall be governed by and consistent with any applicable constitutional requirements, but the procedure prescribed by such rules shall be deemed to satisfy (and shall be in lieu of) any and all statutory requirements (for specific appropriation or other formal release [fol. 36-6] by state officers of state moneys prior to their expenditure) which might otherwise be applicable to withdrawals from the fund. (c) Treasurer. The commission shall designate a treasurer of the fund, who shall pay all vouchers duly drawn upon the fund, in such manner as the commission may prescribe. He shall have custody of all

moneys belonging to the fund and not otherwise held or deposited or invested pursuant to this Act. The treasurer shall give bond conditioned on the faithful performance of his duties as treasurer of the fund, in a form prescribed by statute or approved by the attorney general, and in an amount specified by the commission and approved by the governor. All premiums upon bonds required pursuant to this section when furnished by an authorized surety company or by a duly constituted governmental bonding fund shall be paid from the unemployment administration fund. The treasurer shall deposit and/or invest the fund under the supervision and control of the commission, subject to the provisions of this Act. (d) Deposit. All contributions paid under this Act shall upon collection be deposited in or invested in the obligations of the "Unemployment Trust Fund" of the United States Government or its authorized agent, so long as said trust fund exists, notwithstanding any other statutory provision to the contrary. The commission shall requisition from the Unemployment Trust Fund necessary amounts from time to time.

Section 4. Contributions—(a) Payment. On and after the first day of January, 1936, contributions shall accrue and become payable by each employer then subject to this Act. Thereafter contributions shall accrue and become payable by any new employer on and after the date on which he becomes newly subject to this Act. The contributions required hereunder shall be paid by each employer in such manner and at such times as the commission may prescribe. (b) Rates of Contributions. Every employer shall pay contributions equal to the following percentages of the total wages payable (regardless of the time of payment) with respect to employment by him during such month: (1) With respect to employment during the calendar year 1936 the rate shall be ninety one-hundredths (.90) of one per centum; (2) With respect to employment during the calendar year 1937 the rate shall be one and eighty one-hundredths (1.80) of per centum; (3) With respect to employment during the [fol. 36-7] calendar year 1938 and thereafter the rate shall be two and seventy one-hundredths (2.70) of per centum. (c) Future Rates, Based on Benefit Experience. Based on the actual contribution and benefit experience of employ-

ers under this act, the commission shall (in the year 1941 and in each calendar year thereafter) classify employers in accordance with said experience; and shall determine for each employer the rate of contribution which shall apply to him throughout the calendar year, pursuant to said experience and classification. The minimum contributions thus payable to the fund shall in no case amount to less than one and one-half (1½%) per centum or more than four (4%) per centum on the employer's payroll, and the average contribution rate of all employers shall be approximately three (3%) per centum (on payroll) for any calendar year. An employer's contribution rate shall in no case be reduced until there has been at least three calendar years throughout which his employees received or could have received benefits when and if unemployed and eligible. The commission shall investigate and classify industries, employers, and/or occupations with respect to the degree of unemployment hazard in each, taking due account of any relevant and measurable factors, and shall have power to apply any form of classification or rating system which in its judgment is best calculated to rate individually the unemployment risk most equitably for each employer or group of employers and to encourage the stabilization of employment. The general basis of classification proposed to be used for any calendar year shall be subject to discussion, adoption and publication in the manner prescribed in this act for all general commission rules. (d) Contributions by Employees. Each employee shall contribute to the fund one per centum of his wages. Each employer shall be responsible for withholding such contribution from the wages of his employees, shall show such deduction on his payroll records, and shall transmit all such contributions to the fund pursuant to general commission rules.

Section 5. Benefits—(a) Payment of Benefits. After contributions have been due under this act for two years, benefits shall become payable from the fund to any employee who thereafter is or becomes unemployed and eligible for benefits, based on his weeks of employment as defined in this Act, and shall be paid through the employment offices at such times and in such manner as the commission may pre- [fol. 36-8] scribe. (b) Weekly Benefits for Total Unemployment. An employee totally unemployed and eligible in

any week shall be paid benefits (computed to the nearest half-dollar) at the rate of fifty per centum of his full-time weekly wage with maximum benefits of $15.00 per week. (c) Weekly Benefits for Partial Unemployment. An employee partially unemployed and eligible in any week shall be paid sufficient benefits so that his week's wages (and/or any other pay for personal services, including net-earnings from self-employment and his benefits combined will be two dollars more than the weekly benefit to which he would be entitled if totally unemployed in that week. (d) One-to-Four Ratio of Benefits to Employment. The aggregate amount of benefits an employee may at any time receive shall be limited by the number of his past weeks of employment against which benefits have not yet been charged hereunder. Each employee's benefits shall be thus charged against his earliest weeks of employment available for this purpose. Each employee shall receive benefits in the ratio of one-quarter week of total unemployment benefits (or an equivalent amount, as determined by general commission rules, of benefits for partial unemployment or for partial and total unemployment combined) to each week of employment of such employee occurring within the 104 weeks preceding the close of the employee's most recent week of employment. (e) Maximum Weeks of Benefit in Any Year. Benefits shall be paid each employee for the weeks during which he is totally or partially unemployed and eligible for benefits, based on his past weeks of employment; but not more than sixteen (16) weeks of total unemployment benefits (or an equivalent total amount, as determined by commisssion rules, of benefits for partial unemployment or for partial and total unemployment combined) shall be paid any employee for his weeks of unemployment occurring within any fifty-two (52) consecutive weeks. (f) Additional Benefits (One-to-Twenty Ratio) An eligible employee who has received the maximum benefits permitted under subsection (e) shall receive additional benefits in the ratio of one week of total unemployment benefit (or its equivalent) to each unit of twenty aggregate weeks of employment occurring within the 260 weeks preceding the close of the employee's most recent week of employment, and against which benefits have not already been charged under this Act. Such additional benefits shall be charged against the employee's earliest weeks of employment available for this purpose.

[fol. 36-9] Section 6. Benefits Eligibility Conditions—(a) Employment Requirement. An employee shall be deemed eligible for benefits for any given week of his unemployment only if he has either (1) accumulated 40 weeks of employment subject hereto within the 104 weeks immediately preceding the date of his application for benefits, or (2) accumulated 26 weeks of employment subject hereto within the 52 weeks immediately preceding the date of his application for benefits. (b) Availability and Registration for Work. An employee shall not be eligible for benefits in any week of his partial or total unemployment unless in such week he is physically able to work and available for work, whenever duly called for work through the employment office. To prove such availability for work, every employee partially or totally unemployed shall register for work and shall file claim for benefits at the employment office, within such time limits and with such frequency and in such manner (in person or in writing) as the commission may by general rule prescribe. No employee shall be eligible for benefits for any week in which he fails without good cause to comply with such registration and filing requirements. A copy of the commission's rules covering such requirements shall be furnished by it to each employer who shall inform his employees of the terms thereof when they become unemployed. (c) Waiting Period. Benefits shall be payable to an employee only for his weeks of unemployment occuring subsequent to a "waiting period" whose duration shall in each case be determined as follows: An aggregate of three (3) waiting-period-units shall be required of the employee within the fifty-two (52) weeks preceding the start of any given week of unemployment. There shall not be counted toward an employee's required waiting period or periods any week of total or partial unemployment in which he is ineligible for benefits under subsection (b), (d), (e), (f), (g) of this section. (d) During Trade Disputes. An employee shall not be eligible for benefits for any week in which his total or partial unemployment is directly due to a labor dispute still in active progress in the establishment in which he is or was last employed. (e) Voluntary Leaving An employee who has left his employment voluntarily without good cause connected with such employment shall be ineligible for benefits for the week in which such leaving occurred and for the three next following weeks. (f) Dis-

charge for Misconduct. An employee who has been discharged for proved misconduct connected with his employ-
[fol. 36-10] ment shall thereby become ineligible for benefits for the week in which such discharge occurred and for not less than the three nor more than six next following weeks, as determined by the commission in each individual case. (g) Refusal of Suitable Employment. If an otherwise eligible employee fails, without good cause either to apply for suitable employment when notified by the employment office, or to accept suitable employment when offered him, he shall thereby become ineligible for benefits for the week in which such failure occurred and for the three next following weeks. "Suitable employment" shall mean any employment for which the employee in question is reasonably fitted, which is located within a reasonable distance of his residence or last employment, and which is not detrimental to his health, safety or morals. No employment shall be deemed suitable, and benefits shall not be denied under this act to any otherwise eligible employee for refusing to accept new work, under any of the following conditions: (1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (2) if the wages, hours, and other conditions of the work offered are substantially less favorable to the employee than those prevailing for similar work in the locality; (3) if acceptance of such employment would either require the employee to join a company union or would interfere with his joining or retaining membership in any bona fide labor organization.

Section 7. Settlement of Benefit Claims.—(a) Filing. Benefit claims shall be filed at the employment office, pursuant to general commission rules. (b) Initial Determination. A deputy designated by the commission shall promptly determine whether or not the claim is valid, and the amount of benefits apparently payable thereunder, and shall duly notify the employee and his most recent employer of such decision. Benefits shall be paid or denied accordingly, unless either party requests a hearing within five calendar days after such notification was delivered to him or was mailed to his last known address. (c) Appeals. Unless such request for a hearing is withdrawn the claims thus disputed shall be promptly decided, after affording both parties reasonable opportunity to be heard, by such appeal tribunal as the commission may designate or establish for this purpose.

The parties shall be duly notified of such tribunal's decision, which shall be deemed a final decision by the commission [fol. 36-11] except in cases where the commission acts on its own motion or, pursuant to general rules, permits the parties to initiate further appeal or review. (d) Appeal Tribunals. To hear and decide disputed claims, the commission may establish one or more appeal tribunals consisting in each case of one full-time salaried examiner (or commissioner) who shall serve as chairman, and of two other members, namely an employer or representative of employers and an employee or representative of employees, who shall each be paid a fee of not more than ten dollars per day of active service on such tribunal (plus necessary expenses) and shall serve until replaced by the commission except that no person shall hear any case in which he is a directly interested party. The chairman of such appeal tribunal may act for it at any session in the absence of one or both other members, provided they have had due notice of such session. (e) Procedure. The manner in which claims shall be presented, the reports thereon required from the employee and from employers, and the conduct of hearings and appeals shall be governed by general commission rules (whether or not they conform to common law or statutory rules of evidence and other technical rules of procedure) for determining the rights of the parties. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing shall be taken down by a stenographer, but need not be transcribed unless the disputed claim is further appealed. (f) Commission Review. The commission shall have the power to remove or transfer the proceedings on any claim pending before a deputy, appeal tribunal, or commissioner; and may on its own motion (within ten days after the date of any decision by a deputy, appeal tribunal, commissioner, or by the commission as a body) affirm, reverse, change, or set aside any such decision, on the basis of the evidence previously submitted in such case, or direct the taking of additional testimony. (g) Appeal to Courts. Except as thus provided, any decision (unless appealed pursuant to general commission rules) shall, ten days after the date of such decision, become the final decision of the commission, and all findings of fact made therein shall (in the absence of fraud) be conclusive; and such decision shall then be subject to judicial

review solely on questions of law. Such judicial review shall be barred unless the plaintiff party has used and exhausted the remedies provided hereunder and has commenced judicial action (with notice to the commission) within ten days after a decision hereunder has become the final decision of [fol. 36-12] the commission in the disputed case. (h) Oaths and Witnesses. In the discharge of their duties under this section any deputy, any member of an appeal tribunal, and any examiner, commissioner, or duly authorized representative of the commission shall have power to administer oaths to persons appearing before them, take depositions, certify to official acts, and by subpoenas (requested by the commissioner of and served by the officers of the circuit court having jurisdiction of the parties) to compel attendance of witnesses and the production of books, papers, documents, and records necessary or convenient to be used by them in connection with any disputed claim. Witness fees and other expenses involved in proceedings under this section shall be paid to the extent necessary, at rates specified by general commission rules, from the unemployment administration fund.

Section 8. Court Review.—(a) Within ten (10) days after the decision of the Commission has become final, either party may appeal to the Circuit Court, sitting in the county of the residence of the employee, from such decision. Upon the filing of any such appeal notice thereof shall be served upon the Commission by the appellant. Such appeals shall be heard by the Court at the earliest possible date and shall be given precedence over all other civil cases. It shall not be necessary on any such appeal to enter exceptions to the rulings of the Commission and no bond shall be required for entering such appeal. Said appeal shall be effected by the filing of a brief statement of his grievances by the appellant with the Clerk of said court. (b) An appeal may be taken from a decision of such Court to the Court of Appeals of Alabama or the Supreme Court of Alabama as now provided by law.

Section 9. Unemployment Compensation Commission.—(a) Organization. There is hereby created a commission of three members, to be known as the Unemployment Compensation Commission of Alabama. The members of the commission shall be appointed by the Governor within

ninety days after the passage of this Act. The Governor shall designate one member as Chairman. The commissioners thus appointed shall serve, as designated by the Governor at the time of appointment, one for a term of two years, one for a term of four years, and one for a term of six years. At the expiration of such initial terms appointments shall be made for a term of six years in each case. Any appointment to a vacancy shall be for the unexpired term in ques- [fol. 36-13] tion. No commissioner shall, during his term of office, serve as an officer or committee member of any political party organization. (b) Salaries. The Chairman of the commission shall be paid a fixed monthly salary, at the rate of $3,600.00 per year of service, from the unemployment administration fund. The compensation of the associate members shall be ten ($10.00) dollars per day for days actually spent upon the business of the commission, and necessary travelling expenses. (c) Meetings. The commission shall meet one day each calendar month. It shall meet such additional days each month as the business of the commission may require, when authorized by the Governor. (d) Quorum. Any two commissioners shall constitute a quorum to transact business. No vacancy shall impair the right of the remaining commissioners to exercise all of the powers of the commission so long as a majority remain. The commission shall determine its own organization and methods of procedure.

Section 10. Administration.—(a) Duties and Power of Commission. It shall be the duty of the commission to administer this Act; and it shall have power and authority to adopt and enforce all reasonable rules and orders necessary or suitable to that end, and to employ any persons, make any expenditures, require any reports, and take any other action (within its means and consistent with the provisions of this act) necessary or suitable to that end. Annually, by the first day of February, the commission shall submit to the governor a summary report covering the administration and operation of this Act during the preceding calendar year, and making such recommendations as the commission deems proper. Whenever the commission believes that a change in contribution and/or benefit rates will become necessary to protect the solvency of the fund, it shall at once inform the governor and the legislature thereof, and make recommendations accordingly. (b) General Commis-

sion Rules—General rules, interpreting or applying this act and affecting all (or classes of) employers, employees, or other persons or agencies, shall be adopted by the commission only after discussion with a representative statewide advisory council (constituted as hereinafter described) or after public hearing (before the commission) of which notice has been given through the press. Such general commission rules shall, upon adoption by a majority of the commission, be duly recorded in its minutes and be filed with the Secretary of State, and shall thereupon take legal effect. [fol. 36-14] Such rules may be amended, in the same manner as is above provided for their adoption. (c) Publication. The Commission shall cause to be printed in proper form for distribution to the public the text of this Act, the commission's general rules, its annual report to the governor, and any other material the commission deems revelant and suitable, and shall furnish the same to any person upon application therefor; and such printing and availability upon application shall be deemed a sufficient publication of the same. (d) Personnel. The Commission subject to the written approval of the Governor is authorized, within its means to appoint and fix the compensation of such officers, accountants, attorneys, experts and other persons as are necessary in the execution of its function. All positions in the administration of this Act shall be filled by persons selected and appointed on a nonpartisan merit basis, under rules and regulations of the commission. The commission shall not employ or pay any person who is serving as an officer or committee member of any political party organization. The commission shall fix the duties and powers of all persons thus employed, and may authorize any such person to do any act or acts which could lawfully be done by a commissioner. The commission may in its discretion bond any person handling moneys or signing checks hereunder. (e) Advisory Councils. The Governor shall appoint a state-wide advisory council of not less than nine members and may appoint local advisory councils, composed in each case of equal numbers of employer representatives and employee representatives (namely of persons who may fairly be regarded as thus representative because of their vocation, employment or affiliations), and of members representing the public generally. Such councils shall aid the commission in formu-

lating policies and discussing problems related to the administration of this act and in assuring impartiality, neutrality and freedom from political influence in the solution of such problems. Such advisory councils shall serve without compensation, but shall be reimbursed for any necessary travelling expenses, when approved by the Governor. Said state-wide advisory council shall assemble immediately upon their appointment by the Governor and institute a careful study and analysis of the National Security Act and of its relation to this Act and to the other Acts and laws of the State of Alabama designed to coordinate this State and its institutions with the plans and purposes of the Federal Government as expressed in its said Security Act. Said council shall at its earliest possible convenience [fol. 36-15] prepare recommendations as to changes, amendments or modifications of such Acts and laws of the State of Alabama, and particularly this Act, and said recommendations shall be submitted to the Governor and to the Legislature as its next session and at such succeeding sessions as said council may deem proper. (f) Employment Stabilization. It shall be one of the purposes of this Act to promote the regularization of employment in enterprises, localities, industries and the state. The commission, with the advice and aid of its advisory councils, shall take all appropriate steps within its means to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise and assist in the establishment and operation, by municipalities, counties, school districts and the state, of reserves for public works to be used in times of business depression and unemployment; to promote the reemployment of unemployed workers throughout the State in every other way that may be feasible; and to these ends to employ experts and to carry on and publish the results of investigations and research studies. (g) Records and Reports. Every employer (of any person in this State) shall keep true and accurate employment records of all persons employed by him, and of the weekly hours worked for him by each, and of the weekly wages paid by him to each such person. Such records shall be open to inspection by the commission or its authorized representatives at any reasonable time and as often as may be necessary. The commission may re-

quire from any employer (of any person in this State) any reports covering persons employed by him, or employment, wages, hours, unemployment and related matters, which the commission deems necessary to the effective administration of this act. Information thus obtained shall not be published or be open to public inspection in any manner revealing the employer's identity, and any commission employee guilty of violating this provision shall be subject to the penalties provided in this Act. (h) Representation in Court. On request of the commission the attorney general shall represent the commission and the state in any court action relating to this act or to its administration and enforcement, except as special counsel may be designated by the commission with the approval of the Governor and except as otherwise provided in this act. (i) State Federal Cooperation. The commission is hereby authorized and directed to cooperate in all necessary respects with the appropriate agencies and departments of the federal gov-
[fol. 36-16] ernment, in the administration of this act and of free public employment offices; and to make all reports thereon requested by any directly interested federal agency or department; and to accept any sums allotted or apportioned to the state for such administration, and to comply with all reasonable federal regulations governing the expenditures of such sums. (j) Employment Offices. The commission shall establish and maintain such free public employment offices, including such branch offices, as may be necessary for the proper administration of this Act, when and if such officers are not maintained by the federal government in the state and their services made available to the state. All moneys thereafter made available by or received by the state for the state employment service shall be paid to (and expended from) the unemployment administration fund, and a special "employment service account" shall be maintained for this purpose as a part of said fund.

Section 11. Acceptance of Act of Congress.—Relating to Employment Service. (a) Formal Acceptance. The state hereby accepts the provisions of the Wagner-Peyser Act, approved June 6, 1933 (48 Stat. 113, United States Code, Title 29, Section 49 (c); "An Act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and

for other purposes" in conformity with Section 4 thereof, and will observe and comply with the requirements of said Act of Congress. (b) State Employment Service. There is hereby created, under the Unemployment Compensation Commission, a division to be known as the "Alabama State Employment Service," which shall be affiliated with the United States Employment Service. The said division is hereby designated and constituted the agency of this state for the purposes of the Wagner-Peyser Act. The said division shall be administered by a full-time salaried director, who is hereby given full power to cooperate with all authorities of the United States having powers or duties under the said Act of Congress and to do and perform all things necessary to secure to this state the benefits of the said Act of Congress in the promotion and maintenance of a system of public employment offices. (c) Financing. All moneys made available by or received by this State under said Act of Congress shall be paid into a special "employment service account" in the unemployment administration fund, and said moneys are hereby appropriated and made available to the "Alabama State Employment Service" to be expended as provided by this Act and by said Act of Congress.

[fol. 36-17] Section 12. Reciprocal Benefit Arrangements with Other States.—The Commission is hereby authorized, subject to approval by the governor, upon such terms as in its judgment will not result in any loss to the fund, to enter into reciprocal arrangements with the proper authorities, in the case of any other unemployment compensation system established by any state law or by an Act of Congress, as to persons who have (after acquiring rights to benefits under this Act or under such other system) newly come under this Act or under such other system, whereby such benefits (or substantially equivalent benefits) shall be paid (or both paid and financed) in whole or in part through (or by) the fund of the unemployment compensation system newly applicable to such person. Such reciprocal arrangements shall be adopted and published by the commission in the same manner as its general rules.

Section 13. Protection of Rights and Benefits.—(a) Waiver of Rights Void. No agreement by an employee to waive his right to benefit or any other right under this Act

shall be valid. No agreement by an employee or by employees to pay all or any portion of the contributions required under this act from employers shall be valid. No employer shall make or require any deduction from wages to finance the contributions required of him, or require any waiver by an employee of any rights hereunder. Any employee claiming a violation of this section may have recourse to the method set up in this Act for deciding benefit claims; and the commission shall have power to take any steps necessary or suitable to correct and prosecute any such violation. (b) Limitation of Fees. No employee shall be charged fees of any kind by the commission or its representatives, in any proceeding under this Act. Any employee claiming benefits in any proceeding or court action may be represented by counsel or other duly authorized agent; but no such counsel or agents shall together charge or receive for such services more than ten per centum of the maximum benefits at issue in such proceeding or court action. (c) No Assignment or Garnishment of Benefits. Benefits which are due or may become due under this Act shall not be assignable before payment, but this provision shall not affect the survival thereof; and when awarded, adjudged, or paid shall be exempt from all claims of creditors and from levy, execution and attachment or other remedy now or hereafter provided for recovery or collection of debt, which exemption may not be waived.

[fol. 36-18] Section 14. Collection of Contributions.—(a) Interest on Tardy Payments. If any employer fails to make promptly, by the date it becomes due hereunder, any payment required to be made by him under this act, he shall be additionally liable (to the unemployment administration fund) for interest on such payment at the rate of one per centum per month from the date such payment became due until paid, pursuant to general commission rules. (b) Bankruptcy. In the event of an employers' dissolution, bankruptcy, adjudicated insolvency, receivership, assignment for benefits of creditors, judicially confirmed extension proposal or composition, or any analogous situation, contribution payments then or thereafter due under this act shall have the greatest priority (subsequent to taxes, but at least equal to wage claims) then permitted by law; but this sub-section shall not impair the lien of any judgment entered upon any award. (c) Court Action. Upon

complaint of the commission, the attorney-general shall institute and prosecute the necessary actions or proceedings for the recovery of any contributions or other payments due hereunder; or, at his request and under his direction, the prosecuting attorney (of any county in which the employer has a place of business) shall institute and prosecute the necessary actions or proceedings for the recovery of any contributions or other payments due hereunder.

Section 15. Penalties.—(a) Whoever wilfully makes a false statement or representation to obtain or increase any benefit or other payment under this Act, either for himself, or for any other person, shall upon conviction be punished by a fine of not less than twenty nor more than fifty dollars, or by imprisonment in the county jail not longer than thirty days, or by both such fine and imprisonment; and each such false statement or representation shall constitute a separate and distinct offense. (b) Any employer (of any person in this state) and any officer or agent of an employer, who wilfully makes a false statement or representation to avoid becoming or remaining subject hereto or to avoid or reduce any contribution or other payment required of such employer under this act, or who wilfully fails or refuses to make any such contribution or other payment or to furnish any reports duly required hereunder or to appear or testify or produce records as lawfully required hereunder, or who makes or requires any deduction from wages to pay all or any portion of the contributions [fol. 36-19] required from employers, or who tries to induce any employee to waive any right under this act, shall upon conviction be punished by a fine of not less than twenty nor more than two hundred dollars, or by imprisonment in the county jail not longer than sixty days, or by both such fine and imprisonment; and each such false statement or representation, and each day of such failure or refusal, and each such deduction from wages, and each such attempt to induce shall constitute a separate and distinct offense. (c) Any violation, of any provisions of this Act, for which a penalty is neither prescribed above nor provided by any other applicable statute, shall be punished by a fine of not less than twenty nor more than fifty dollars, or by imprisonment in the county jail not longer than thirty days, or by both such fine and imprisonment. (d) On complaint of the commission the fines specified or provided in this sec-

tion may be collected by the state in an action for debt. All fines thus collected shall be paid to the unemployment administration fund.

Section 16. Unemployment Administration Fund.—(a) Special Fund. There is hereby created the "Unemployment Compensation Administration Fund", to consist of all moneys received by the state or by the commission for the administration of this act or appropriated by the State for the purposes of this act and actually paid into such fund. This special fund shall be handled by the state treasurer as other state moneys are handled; but it shall be expended solely for the administration of this Act and other purposes herein specified, and its balances shall not lapse at any time but shall remain continuously available to the commission for expenditure consistent herewith. (b) Federal Aids. All federal moneys allotted or apportioned to the State by the federal Social Security Board (or other agency) for the administration of this act shall be paid into the unemployment administration fund. (c) Employment Service Account. A special "employment service account" shall be maintained as a part of said fund.

Section 17. Appropriations.—(a) All moneys in the unemployment administration fund at any time are hereby appropriated to the unemployment compensation commission including its employment service division. (b) There is hereby appropriated, to the employment service account of the unemployment administration fund, from any money in the state treasury not otherwise appropriated, for the fiscal year ending September 30, 1935 and annually thereafter on the first day of October, the sum of $10,000.

[fol. 36-20] Section 18. Saving Clause.—The legislature reserves the right to amend or repeal all or any part of this act at any time; and there shall be no vested private right of any kind against such amendment or repeal.

Section 19. Separability of Provisions.—If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 20. Effective Date.—This act shall take effect upon its enactment.

Approved September 14, 1935.

[fols. 37-37-1] EXHIBIT "B" TO COMPLAINT

Each Probate Judge, Sheriff, Clerk and Register of the Circuit Court is required by law to preserve this Act in a book kept for that purpose in his office for the information of the public until Acts are published in a permanent form and shall be open to inspection at all reasonable hours of the day.

Alabama General Laws

(Extraordinary Session, 1936)

No. 156.) (H. 204—Owens (Etowah.)

AN ACT

To amend the title, and section 10, and section 16, and section 17, and to repeal section 11 of an act approved September 14, 1935, Entitled "An Act to create a system of unemployment compensation; to provide for an unemployment compensation fund; to provide for contributions to such fund; to provide for benefit payments from such funds; to provide eligibility conditions for such benefits; to provide for the settlement of benefit claims; to provide for judicial review of disputed benefit claims; to create an Unemployment Compensation Commission and to provide for its appointment, compensation and prescribe its powers and duties; to provide for the appointment and compensation of other employees and the maintenance and other expenses of such commission; to accept the benefit of an Act of Congress, approved June 6, 1933, Entitled "An Act to provide for the establishment of a National employment system and for cooperation with the states in the promotion of such system and for other purposes", to provide for the creation of An Alabama State Employment Service and to prescribe its powers, duties and functions; to authorize reciprocal benefit arrangements with other states or the Federal Government; to prohibit the waiver of rights and benefits arising hereunder; to limit attorney's fees in cases arising under this act; to regulate alienation of benefits; to provide penalties for failure to comply with or violations of this act; to establish an unemployment administration fund; to appropriate funds to maintain the same; and to retain the right to amend or repeal this act". (1935 Acts, Page 950).

Be it enacted by the Legislature of Alabama:

Section 1. That the title of said act be and the same is hereby amended so as to read as follows: An Act to create a system of unemployment compensation; to provide for an unemployment compensation fund; to provide for contributions to such fund; to provide for benefit payments from such funds; to provide eligibility conditions for such benefits; to provide for the settlement of benefit claims; to provide for judicial review of disputed benefit claims; to create an Unemployment Compensation Commission and to provide for its appointment, compensation and prescribe its powers and duties; to provide for the appointment and compensation of other employees and the maintenance and other expenses of such commission; to authorize reciprocal benefit arrangements with other states or the Federal Government; to prohibit the waiver of rights and benefits arising hereunder; to limit attorney's fees in cases arising under this act; to regulate alienation of benefits; to provide penalties for failure to comply with or violations of this act; to establish an unemployment administration fund; to appropriate [fol. 37-2] funds to maintain the same; and to retain the right to amend or repeal this act.

Section 2. That section 10 be and the same is hereby amended so as to read as follows:

Section 10. Administration.—(a) Duties and Powers of Commission. It shall be the duty of the commission to administer this act; and it shall have power and authority to adopt and enforce all reasonable rules and orders necessary or suitable to that end, and to employ any persons, make any expenditures, require any reports, and take any other action (within its means and consistent with the provisions of this act) necessary or suitable to that end. Annually, by the first day of February, the commission shall submit to the governor a summary report covering the administration and operation of this act during the preceding calendar year, and making such recommendations as the commission deems proper. Whenever the commission believes that a change in contribution and/or benefit rates will become necessary to protect the solvency of the fund, it shall at once inform the Governor and the legislature thereof, and make recommendations accordingly. (b) Gen-

eral Commission Rules. General rules, interpreting or applying this act and affecting all (or classes of) employers, employees, or other persons or agencies, shall be adopted by the commission only after discussion with a representative state-wide advisory council (constituted as hereinafter described) or after public hearing (before the commission) of which notice has been given through the press. Such general commission rules shall, upon adoption by a majority of the commission, be duly recorded in its minutes and be filed with the Secretary of State, and shall thereupon take legal effect. Such rules may be amended, in the same manner as is above provided for their adoption. (c) Publication. The Commission shall cause to be printed in proper form for distribution to the public the text of this act, the commission's general rules, its annual report to the Governor, and any other material the commission deems relevant and suitable, and shall furnish the same to any person upon application therefor; and such printing and availability upon application shall be deemed a sufficient publication of the same. (d) Personnel. The commission subject to the written approval of the Governor is authorized, within its means to appoint and fix the compensation of such officers, accountants, attorneys, experts and other persons as are necessary in the execution of its functions. All positions in the administration of this act shall be filled by persons selected and appointed on a non-partisan merit basis, under rules and regulations of the commission. The commission shall not employ or pay any person who is serving as an officer or committee member of any political party organization. The commission shall fix the duties and powers of all persons thus employed, and may authorize any [fol. 37-3] such person to do any act or acts which could lawfully be done by a commissioner. The Commission may in its discretion bond any person handling moneys or signing checks hereunder. (e) Advisory Councils. The Governor shall appoint a state-wide advisory council of not less than nine members and may appoint local advisory councils, composed in each case of equal numbers of employer representatives and employee representatives (namely of persons who may fairly be regarded as thus representative because of their vocation, employment or affiliations), and of members representing the public generally. Such councils shall aid the commission in formulating policies and dis-

cussing problems related to the administration of this act and in assuring impartiality, neutrality and freedom from political influence in the solution of such problems. Such advisory councils shall serve without compensation, but shall be reimbursed for any necessary traveling expenses, when approved by the Governor. Said State-wide advisory council shall assemble immediately upon their appointment by the Governor and institute a careful study and analysis of the National Security Act and of its relation to this act and to the other acts and laws of the State of Alabama designed to coordinate this State and its institutions with the plans and purposes of the Federal Government as expressed in its said Security Act. Said council shall at its earliest possible convenience prepare recommendations as to changes, amendments or modifications of such acts and laws of the State of Alabama, and particularly this act, and said recommendations shall be submitted to the Governor and to the Legislature at its next session and at such succeeding sessions as said council may deem proper. (f) Employment Stabilization. It shall be one of the purposes of this act to promote the regularization of employment in enterprises, localities, industries and the state. The commission, with the advice and aid of its advisory councils, shall take all appropriate steps within its means to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise and assist in the establishment and operation, by municipalities, counties, school districts and the State, of reserves for public works to be used in times of business depression and unemployment; to promote the reemployment of unemployed workers throughout the State in every other way that may be feasible; and to these ends to employ experts and to carry on and publish the results of investigations and research studies. (g) Records and Reports. Every employer (of any person in this State) shall keep true and accurate employment records of all persons employed by him, and of the weekly hours worked for him by each, and of the weekly wages paid by him to each such person. Such records shall be open to inspection by the [fol. 37-4] commission or its authorized representatives at any reasonable time and as often as may be necessary. The commission may require from any employer (of any per-

son in this State) any reports covering persons employed by him, or employment, wages, hours, unemployment and related matters, which the commission deems necessary to the effective administration of this act. Information thus obtained shall not be published or be open to public inspection in any manner revealing the employer's identity, and any commission employee guilty of violating this provision shall be subject to the penalties provided in this act. (h) Representation in Court. On request of the commission the attorney general shall represent the commission and the State in any court action relating to this act or to its administration and enforcement, except as special counsel may be designated by the Commission with the approval of the Governor, and except as otherwise provided in this act. (i) State Federal Cooperation. The commission is hereby authorized and directed to cooperate in all necessary respects with the appropriate agencies and departments of the Federal Government, in the administration of this act and of free public employment offices; and to make all reports thereon requested by any directly interested Federal agency or department, and to accept any sums allotted or apportioned to the State for such administration, and to comply with all reasonable Federal regulations governing the expenditures of such sums.

Section 3. That Section 11 be and the same is hereby repealed.

Section 4. That Section 16 be and the same is hereby amended so as to read as follows:

Section 16. Unemployment Administration Fund.—(a) Special Fund. There is hereby created the "Unemployment Compensation Administration Fund, to consist of all moneys received by the State or by the commission for the administration of this Act or appropriated by the State for the purposes of this act and actually paid into such fund. This special fund shall be handled by the State Treasurer as other State moneys are handled; but it shall be expended solely for the administration of this Act and other purposes herein specified, and its balances shall not lapse at any time but shall remain continuously available to the commission for expenditure consistent herewith. (b) Federal Aids. All Federal moneys allotted or apportioned to the State by the Federal Social Security Board (or other agency) for the

administration of this act shall be paid into the unemployment administration fund. Sub-division C. Whenever requested by the Unemployment Compensation Commission to perform certain acts in connection with the Unemployment Compensation Commission, the Alabama State Employment Service shall perform such acts as are requested and in the manner prescribed by the Unemployment Com- [fol. 37-5] pensation Commission as expeditiously and economically as may be, and shall render to the Unemployment Compensation Commission a statement of the actual expenses incurred by the Alabama State Employment Service, and the manner in which they were performed, whereupon the Unemployment Compensation Commission shall pay to the Alabama State Employment Service the amount of such expenses incurred.

Section 5. That section 17 be and the same is hereby amended so as to read as follows; Section 17. Appropriations. All moneys in the unemployment administration fund at any time are hereby appropriated to the Unemployment Compensation Commission.

Section 5½. It is expressly provided that in the event the Supreme Court of the United States shall hold Title Three or title nine of the Federal "Social Security Act" approved by the President August 14th, 1935, unconstitutional or inoperative for any reason whatsoever, then this Act shall become void, inoperative and of no effect and all payments of levies, contributions, taxes or pay-roll deductions made hereunder and then remaining unexpended shall be returned ratably to those making such payments and if such payments contain in whole or part deductions from the remuneration of employees, such employees shall in turn be repaid ratably such deductions as are returned on their account to their employers.

Section 6. That if any section, clause or provision of this act should be held invalid, it shall not affect the remaining portions not so held invalid.

Section 7. This act shall take effect immediately upon its passage and approval by the Governor.

Approved April 21, 1936.

[fols. 38-38-1] EXHIBIT "C" TO COMPLAINT

Each Probate Judge, Sheriff, Clerk and Register of the Circuit Court is required by law to preserve this Act in a book kept for that purpose in his office for the information of the public until Acts are published in a permanent form and shall be open to inspection at all reasonable hours of the day.

Alabama General Laws

(Extraordinary Session, 1936)

No. 194.) (S. 125—Stephens.

AN ACT

To amend an Act approved September 14, 1935, entitled "An Act to create a system of unemployment compensation; to provide for an unemployment compensation fund; to provide for contributions to such fund; to provide for benefit payments from such funds; to provide eligibility conditions for such benefit; to provide for the settlement of benefit claims; to provide for judicial review of disputed benefit claims; to create an Unemployment Compensation Commission and to provide for its appointment, compensation and prescribe its powers and duties; to provide for the appointment and compensation of other employees and the maintenance and other expenses of such Commission; to accept the benefit of an Act of Congress, approved June 6, 1933, entitled. "An Act to provide for the establishment of a national employment system and for cooperation with the States in the promotion of such system and for other purposes"; to provide for the creation of an Alabama State Employment Service and to prescribe its powers, duties and functions; to authorize reciprocal benefit arrangements with other States or the Federal Government; to prohibit the waiver of rights and benefits arising hereunder; to limit attorney's fees in cases arising under this Act; to regulate alienation of benefits; to provide penalties for failure to comply with or violations of this Act; to establish an Unemployment Administration Fund; to appropriate funds to maintain the same; and to retain the right to amend or repeal this Act. This Act being approved September 14, 1935.

Be it enacted by the Legislature of the State of Alabama:

That Section 2 (g) be amended so as to read as follows: Section 2 (g) "Employment" means any employment in

which all or the greater part of the person's work (within the continental United States) is or was customarily performed within this State, under any contract of hire, oral or written, express or implied, whether such person was hired and paid directly by the employer or through any other person employed by the employer, provided the employer had actual or constructive knowledge of such contract. Such employment shall include the person's entire employment (in all states, including the District of Columbia). In the case of all other persons employed partly in this state and partly in other states, the commission is authorized, with the approval of the Governor, to enter into reciprocal arrangements with other states as to the extent the employment of such persons shall be included under this definition. The term "employment" shall not apply to: (1) Agricultural labor; (2) Domestic service in a private home; (3) Service performed as an officer Bar Pilot or [fol. 38-2] member of the crew of a vessel on the navigable waters of the United States; (4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother; (5) Service performed in the employ of the United States Government or of an instrumentality of the United States; (6) Service performed in the employ of a carrier engaged in interstate commerce and subject to the Act of Congress known as The Railway Labor Act; as amended or as hereafter amended. Service performed by those engaged as Solicitors or agents for Insurance Companies. (7) Service performed in the employ of a state, or political subdivision thereof, or an instrumentality of one or more states or political subdivisions; (8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

"That Section 2 (q), Section 2 (r), Section 4 (d), and Section 5 (d), of "An Act to create a system of unemployment compensation; to provide for an unemployment compensation fund; to provide for contributions to such fund; to provide for benefit payments from such funds; to provide eligibility conditions for such benefit; to provide for

the settlement of benefit claims; to provide for judicial review of disputed benefit claims; to create an Unemployment Compensation Commission and to provide for its appointment, compensation and prescribe its powers and duties; to provide for the appointment and compensation of other employees and the maintenance and other expenses of such Commission; to accept the benefit of an Act of Congress, approved June 6, 1933, entitled "An Act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system and for other purposes"; to provide for the creation of an Alabama State Employment Service and to prescribe its powers, duties and functions; to authorize reciprocal benefit arrangements with other states or the Federal Government; to prohibit the waiver of rights and benefits arising hereunder; to limit attorney's fees in cases arising under this Act; to regulate alienation of benefits; to provide penalties for failure to comply with or violations of this Act; to establish an Unemployment Administration Fund; to appropriate funds to maintain the same; and to retain the right to amend or repeal this Act" be and the same is hereby amended so that the said Sections 2 (q), 2 (r), 4 (d) and Section 5 (d) shall read as follows: Section 2 (q). "Weeks" means calendar week ending at midnight Saturday, or any equivalent period approved by the Commission. [fol. 38-3] (Section 2 (r). "Week of employment" means each calendar week occurring at least one year after contributions first became generally due under this Act from employers then subject hereto, within which the person in question performed any employment subject to this Act for any employer or employers subject to this Act, and was not partially unemployed as defined in Section 2 (k). Section 4 (d). "Contributions by Employees". Each employee shall contribute to the fund one per centum of his wages earned after May 1st, 1936 and after the date as of which the conditions determining whether or not his employer is or will be subject to the Act have been fulfilled. Each employer shall be responsible for withholding such contribution from the wages of his employees, shall show such deduction on his payroll and records, and shall transmit all such contributions to the fund pursuant to general Commission rules. Section 5 (d). One-to-Four Ratio of Benefits to Employment. The aggregate amount of benefits an employee may at any time receive shall be limited by

the number of his past weeks of employment against which benefits have not yet been charged hereunder. Each employee's benefits shall be thus charged against his most recent weeks of employment available for this purpose. Each employee shall receive benefits in the ratio of one-quarter week of total unemployment benefits (or an equivalent amount, as determined by general commission rules, of benefits for partial unemployment or for partial and total unemployment combined) to each week of employment of such employee occurring within the 104 weeks preceding the close of the employees most recent week of employment.

Approved April 21, 1936.

[fol. 38-4] EXHIBIT "D" TO COMPLAINT

Each Probate Judge, Sheriff, Clerk and Register of the Circuit Court is required by law to preserve this Act in a book kept for that purpose in his office for the information of the public until Acts are published in a permanent form and shall be open to inspection at all reasonable hours of the day.

Alabama General Laws

(Extraordinary Session, 1936)

No. 195.) (S. 126—Stephens.

AN ACT

To amend Section 18 of an Act approved September 14, 1935, and entitled "An Act to create a system of unemployment compensation; to provide for an unemployment compensation fund; to provide for contributions to such fund; to provide for benefit payments from such funds; to provide eligibility conditions for such benefits; to provide for the settlement of benefit claims; to provide for judicial review of disputed benefit claims; to create an Unemployment Compensation Commission and to provide for its appointment, compensation and prescribe its powers and duties; to provide for the appointment and compensation of other employees and the maintenance and other expenses of such Commission; to accept the benefit of an Act of Congress, approved June 6, 1933, entitled "An Act to provide for the establishment of a national

employment system and for cooperation with the states in the promotion of such system and for other purposes''; to provide for the creation of an Alabama State Employment Service and to prescribe its powers, duties and functions; to authorize reciprocal benefit arrangements with other states or the Federal Government; to prohibit the waiver of rights and benefits arising hereunder; to limit attorney's fees in cases arising under this Act, to regulate alienation of benefits; to provide penalties for failure to comply with or violations of this Act; to establish an Unemployment Administration Fund; to appropriate funds to maintain the same; and to retain the right to amend or repeal this Act.''

Be it enacted by the Legislature of Alabama:

That Section 18 of an Act approved September 14, 1935, and entitled ''An Act to create a system of unemployment compensation; to provide for an unemployment compensation fund; to provide for contributions to such fund; to provide for benefit payments from such funds; to provide eligibility conditions for such benefits; to provide for the settlement of benefit claims; to provide for judicial review of disputed benefit claims; to create an Unemployment Compensation Commission and to provide for its appointment, compensation and prescribe its powers and duties; to provide for the appointment and compensation of other employees and the maintenance and other expenses of such Commission; to accept the benefit of an Act of Congress, approved June 6, 1933, entitled ''An Act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system and for other purposes''; to provide for the creation of an Alabama State Employment Service and to prescribe its powers, duties and functions; to authorize reciprocal benefit arrangements with other states or the [fol. 38-5] Federal Government; to prohibit the waiver of rights and benefits arising hereunder; to limit attorney's fees in cases arising under this Act; to regulate alienation of benefits; to provide penalties for failure to comply with or violations of this Act; to establish an Unemployment Administration Fund; to appropriate funds to maintain the same; and to retain the right to amend or repeal this Act'', be and the same is hereby amended so as to read as follows:

Section 18. Saving Clause.—The Legislature reserves the right to amend or repeal all or any part of this Act at any time; and there shall be no vested private right of any kind against such amendment or repeal. It is expressly provided that in the event the Supreme Court of the United States shall hold the Federal "Social Security Act" approved by the President August 14th, 1935, unconstitutional or inoperative for any reason whatsoever, then this Act shall become void, inoperative and of no effect and all payments of levies, contributions, taxes or payroll deductions made hereunder and then remaining unexpended shall be returned ratably to those making such payments and if such payments contain in whole or part deductions from the remuneration of employees, such employees shall in turn be repaid ratably such deductions as are returned on their account to their employers.

Approved April 21, 1936.

[fols. 39–39-1] EXHIBIT "E" TO COMPLAINT

Information and Instructions No. 1 on the State Unemployment Compensation Law from the Unemployment Compensation Commission of Alabama to all Employers of Employees in the State of Alabama.

[Alabama Great Seal.]

Unemployment Compensation Commission

Montgomery, Alabama

[fol. 39-2] The reporting requirements of the law (Sec. 10-g) apply to any employer who employed one or more persons in 1935 or any year thereafter. Every employer Regardless of Whether He Deems Himself Subject to the Contribution Provisions of the Law must prepare and submit a report on the enclosed form on or before the expiration of ten days from the date of receipt.

The Purpose of the Accompanying Report Form is to secure information from which the Unemployment Compensation Commission will determine your status under the contribution provisions of the law for the calendar year beginning January 1, 1936. However, When an Employer Is in Fact Subject to the Contribution Provisions of the

Law by Reason of Employment Performed for Him, Failure to Receive this Reporting Form Does Not Affect His Status or Postpone His Liability to Make Required Contributions.

Employers Subject to Contribution Provisions.—The contribution provisions will apply starting Jannary 1, 1936, to all employers who (or whose predecessor in interest) employed at least eight persons, in employment subject to this Act, within each of 20 or more calendar weeks of 1935 (Sec. 2 (f) of the Act).

1. The term "employer" includes persons, partnerships, associations, corporations (whether domestic or foreign), [fol. 39-3] legal representatives, receivers, trustees.

2. The eight persons in any employment subject to this Act need not have been the same persons from week to week. Any calendar week in which the employer had eight employees (Eg., two on Monday, two different other persons on Tuesday, and four other persons on Wednesday) will be counted as one of the 20 weeks.

3. The 20 weeks need not be consecutive but may be any 20 weeks in the calendar year regardless of their order.

Affiliated Employers.—In determining whether an employer of any person in Alabama employs enough persons to be subject to the law, and in determining with respect to what persons such employer is liable for contributions, all persons employed within Alabama by such employer in any of his several places of employment maintained within the state shall be treated as employed by a single "employer"; provided, moreover, that where any employer, either directly or through a holding company or otherwise, has a majority control or ownership of otherwise separate business enterprises employing persons in the state, all such enterprises shall be treated as a single employer for the purpose of coverage and contribution.

Employees of Independent Contractor.—In determining status (and contributions) an employer (of any person) shall, whenever he contracts with any contractor or subcontractor for any work which is part of his usual trade, occupation, profession, or business, be deemed to employ all persons employed by such contractor or subcontractor on such work. However, when any such contractor or subcontractor elects to become fully subject to the Alabama

Unemployment Compensation Law, and agrees with the employer to accept exclusive liability for contributions on account of all persons employed by him on the employer's work, the employer is relieved of this liability.

Such voluntary election and agreement to accept exclusive liability must be in a form approved by the Commission. [fol. 39-4] When the transfer of contribution liability has been approved by the Commission, the employer is to take no account of the employees of a contractor in determining his (employer's) status, or in making his contributions.

Employment Under the Act.—To constitute an employment within the meaning of the Act, services must be performed pursuant to a contract of hire. The contract may be oral or written, expressed or implied, and may be established on constructive notice to the employer. Employment under the Act arises from services performed in the legal relationship of employer and employee (master and servant). An exact definition of this relationship cannot here be given. Whether the relationship actually exists will be a question of the particular facts in each case as interpreted by established law.

An "employee" under a contract of hire can only be an individual, while an "employer" may be a person, partnership, corporation, etc.

An employee performing some service outside of Alabama is, nevertheless, subject to the Act when the greater part of his services on behalf of his employer are customarily performed within this state.

The term "employment" shall not, however, apply to certain contract-of-hire services set out in Section 2(g) (1-6) of the law. These exclusion provisions of the law, and the interpretive rules of the Unemployment Compensation Commission, where such are necessary, are set out as follows:

Section 2-g: "The term 'employment' shall not apply to:

(1) "Agricultural labor:"

Rule 1. The term "agricultural labor" includes all services performed by an employee in connection with:

(a) The cultivation of the soil, the harvesting of crops, or the raising, feeding, or management of livestock and poultry; or

[fol. 39-5] (b) The processing on the farm of articles from such materials, only, as in their raw or natural state are

produced on that farm, also the packing or packaging thereon and transportation therefrom, and the marketing, of those raw materials or articles. Such services do not constitute "agricultural labor", however, unless they are performed by an employee of the owner or tenant of the farm, and unless such processing, packing, packaging, transportation, or marketing is carried on as an incident to ordinary farming operations as distinguished from manufacturing or commercial operations.

As used herein the term "farm" embraces the farm in the ordinarily accepted sense, and includes stock, dairy, poultry, fruit and truck farms, plantations, ranches, and orchards.

Forestry or lumbering is not included in the exception.

(2) "Domestic service in a private home;"

Rule 2. Domestic Service.—A person who performs service of a household nature, in or about the private home of his employer, is engaged in domestic service within the meaning of the Act. However, services usual to a household shall not be deemed within the exclusion if performed in or about hospitals, apartments, rooming or lodging houses, fraternity houses, private schools, clubs, hotels, or any similar establishment.

(3) "Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;"

Rule 3. Maritime Service.—The expression "navigable waters of the United States" means such waters as are navigable in fact and which by themselves or their connection with other waters form a continuous channel for commerce with foreign countries or among the States.

The word "vessel" includes every description of watercraft, or other contrivance, used as a means of transportation on water. It does not include any type of aircraft.

The expression "officers and members of the crew" includes the master or officer in charge of the vessel, however designated, and every individual subject to his authority serving on board, and contributing in any way to the operation and welfare of the vessel. The exception extends, for example, to services rendered by the master, mates, pilots, pursers, surgeons, stewards, engineers, firemen, cooks,

clerks, carpenters, deck hands, porters, chambermaids, and fishermen, oystermen and shrimpers on vessels.
[fol. 39-6] Services of longshoremen and others who work in connection with loading or unloading vessels, are not within the excepted class.

(4) "Services performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of his father or mother;"

Rule 4. Family exclusions from the provisions of the law are specifically limited to those family relationships enumerated in Section 2-g (4).

(5) "Service performed in the employ of the United States Government or of an instrumentality of the United States:"

(6) "Service performed in the employ of a state, or political subdivision thereof, or an instrumentality of one or more states or political subdivisions;"

Rule 5. Government Employees.—This exclusion extends to every service performed by an individual in the employ of the United States, the States, the District of Columbia, Alaska, or Hawaii, or any political subdivision or instrumentality thereof, including every unit or agency of government without distinction between those exercising functions of a governmental nature, and those exercising functions of a proprietary nature.
Services performed by employees of National Banks and Federal Reserve Banks are within the exception.

(7) "Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual."

Rule 6. Services performed for non-profit institutions devoted to certain purposes are excluded from defined employment by Sec. 2-g (7) of the Act. To qualify for the exemption therein specified, an organization must establish

with the Commission its right to exclusion. In all cases, to establish its status, the organization must meet two tests;

(1) It must be organized and operated exclusively for one or more of the specified purposes; and

(2) Its net income must not inure, in whole or in part, to the benefit of private shareholders or individuals.

[fol. 39-7] These tests are similar to those applied by the Bureau of Internal Revenue to organizations claiming exemption from the Federal Income Tax law. In interpreting employer status, the Commission will be guided by the interpretations of that Bureau, insofar as they are not inconsistent with the laws of Alabama. If a copy of a ruling from the Bureau of Internal Revenue exempting an organization from Federal Income Tax liability does not accompany its claim for exclusion submitted to the Alabama Unemployment Compensation Commission, such claim must be supported by a certified copy of the Articles of Incorporation (or Association) and an affidavit disclosing;

(1) Sources of income.

(2) An operating statement and financial statement covering the most recently completed fiscal year.

(3) The actual activities (as distinct from purposes as set out in the Articles of Incorporation)

(4) If a hospital, whether non-pay patients are accepted, with relative number of pay and non-pay patients, or such accounts as would disclose the relation.

When an organization has established its status with the Commission, it need not thereafter make any further report unless it changes the character of its organization or the purposes of its operation. The Commission, however, may inquire into its status, and ascertain whether it is observing the conditions upon which its classification is predicated.

Service Not Performed for Hire.—Only services performed pursuant to a contract of hire (employer-employee) relationship are within an "employment." Hence, compensation for services performed by proprietors, partners, and

directors of associations or corporations, active only in official capacity, and compensation to independent contractors, is not subject to the contribution provisions of the Law.

Rule 7. Directors of an association or corporation who perform no duties other than periodic attendance at directors' meetings, and receive only customary and reasonable directors' fees, are not employees, and such reasonable directors' fees may be excluded from the employer's "defined payroll" for contribution purposes.

[fol. 39-8] Rule 8. (A) Independent Contractor.—A person himself performing services pursuant to a contract which does not establish an employer-employee (master-servant) relationship is not in "employment" within the meaning of the Alabama Unemployment Compensation Act. The Commission will endeavor to interpret and apply the governing principles of the Alabama law to all claims that an employer-employee (master-servant) relation does not exist with respect to the services of a particular individual. Such claims must, in every instance, be supported by a full statement of all relevant facts from the reporting employer.

(B) Independent Contractor With Employees.—Where an employer contracts for work to be performed in the usual trade, occupation, profession or business of the employer, the employees of the contractor are deemed to be the employees of the employer, unless and until the independent contractor himself accepts exclusive liability for contributions on behalf of his own employees. The employer may enter into an agreement divesting himself of his liability under the law only with such contractors as are subject or have elected to become subject to the contribution provision of the law. The Commission prescribes an independent contractor not already subject, shall establish such election by serving written notice upon the Commission that he elects to become fully subject to the provisions of the Alabama Unemployment Compensation Law for not less than two calendar years. (Sec. 2-f). Such written notice must include detailed data sufficient to justify the Commission in granting the application. With such contractors, an employer may enter into an agreement, as part of his contract, which shall provide (1) for the certificate of the contractor that he has established his election with the Commission (citing date) and (2) the agreement of the

contractor to accept exclusive liability for contributions in behalf of all his employees who are engaged on any work, under the contract, which is part of the employer's usual trade, occupation, profession, or business.

What constitutes employment within the usual trade, occupation, profession or business is a matter for determination by the Commission from the particular facts in each case, to be presented to the Commission by the employer. Before an employer may claim exemption of an independent contractor with employees because such contractor is not engaged in the business of the employer, he must se- [fol. 39-9] cure a finding from the Commission to such effect. Usual trade, occupation, profession or business will not generally include maintenance and construction work by independent contractors, when such is not the type of enterprise of the employer, nor any task in which the employer himself does not have employees similarly engaged.

Preparation of Forms.—The attached forms for Employer's Report to the Unemployment Compensation Commission are to be submitted pursuant to the foregoing information and the following instructions:

A. Answers to questions set forth under ("A—General Information, No.-1") are required of all employers.

B. If reporting employer acknowledges he is subject to the Contribution provisions of the Unemployment Compensation Law in certificate provided under "A—General Information No.-1" he need not fill in "B—Weekly Record" on reverse side of Form.

1. In Column A of Weekly Record for 1935 enter total number of persons who performed any service in employer's business in each of the fifty-two weeks of 1935. The entry should include all persons, regardless of nature of service, of time worked, and of money earned, and not merely those that come within the definition of "employees." The test is, were services performed by individuals set out in column A. The time or period of payment for services thus rendered—i. e. Weekly, semi-monthly, or monthly—is immaterial.

2. Columns B, C, D, E, are for the indication of particular classes of exemption claims. These claims run to individuals, included in the total number set out in Column A, who did not

(a) Perform services on a contract of hire basis or

(b) Are specifically excluded by the exceptions from "defined employment" set out in Section 2(g) (1-6) of the Act.

Exclusion claims, as set out in the exclusion column, must be substantiated in the following manner:

Column B—Proprietors, partners, and any person, for whom claim under Rule 7 is made. A signed letter prepared [fol. 39-10] by the employer specifying whether claims run to proprietors, partners, or directors, in official capacity only. If directors, indicate number of meetings per year, specify that attendance at such meetings are the only duties performed, and set out compensation received for attendance.

Column C—Total individuals (without employees) paid for services performed as independent contractors not under contracts of hire (See Paragraph A of Rule 8, foregoing information, before entering claims). Specify in detail in letter the nature of services performed, making a particular showing with regard to;

(1) Nature and degree of control over the activities of the person performing the services permitted the employer by the express or implied terms of the contract.
(2) The basis of compensation.
(3) Time duration of the contract.
(4) Ownership of tools and machines used in performance of the task.
(5) Termination provisions, if any, of contract.
(6) Whether person performing is covered by employer under the Workmen's Compensation Act.

Column D—Total agricultural workers (See Rule 1, foregoing information, before entering exclusion claims). In an accompanying letter to the Unemployment Compensation Commission, the employer should certify with respect to exclusions claimed in Column D that he has read Rule 1 in Information, and it fully applies to all persons claimed excluded.

Column E—Total employees having family relation to reporting employer, (See Rule 4 foregoing Information before entering exclusion claims). Specify in letter to Commission, with respect to Column E exclusions, the nature

of the family relationship, and where children are involved, give their ages.

Column F—All exclusions claimed, not otherwise provided for in Columns B. C. D. & E. of the report, should be set out, with an accompanying signed letter to the Commission as to the basis of the claim. The letter should contain all relevant information.

After appropriate entries have been made in each of the weekly horizontal columns, in accordance with the above procedure, subtract from each weekly total shown in Column A the sum of the exclusions claimed for that week in Columns B-F inclusive and set down the net total in Col- [fol. 39-11] umn G. If there are 20 entries in Column G showing 8 or more in employment, the Reporting Employer is subject to the contribution provisions of the Act starting January 1, 1936 on the basis of his 1935 employment.

Notice to All Employers.—The Act provides (Section 10-g) that "Every employer (of any person in this State) shall keep true and accurate employment records of all persons employed by him, and of weekly hours worked for him by each, and of weekly wages paid by him to each such person." These records are open to inspection by the Commission.

Every employer should make provisions at once for compliance with the above requirement.

NOTE.—As additional Rules are adopted by the Commission they will be made public and copies will be forwarded to subject employers.

[fols. 40–40-1] EXHIBIT "E-1" TO COMPLAINT

Supplement No. 1 to Information and Instructions No. 1

Alabama Unemployment Compensation Law

Amendments to State Law Exempting Certain Railroad Employees and Insurance Agents and Solicitors (Section 2 (g)

8. "Service performed in the employ of a carrier engaged in interstate commerce, and subject to the Act of Congress,

known as the Railway Labor Act, as amended or as hereafter amended."

The test of the exception is not the nature of the services performed by an employee, but is: (1) whether the carrier-employer is engaged in interstate commerce, and, (2) is subject to the Railway Labor Act. An employee might be a clerk working in an office and never leave the state wherein he works. If he performs services for a carrier engaged in interstate commerce and subject to the Railroad Labor Act, he performs exempted services. Under this exception it is apparent that employees of a railroad can be exempted. It is obvious that carriers engaged in interstate commerce, other than railroads, are not subject to the Railway Labor Act. Thus, services performed for buses and bus lines engaged in interstate commerce are not exempted.

Contributions.—A subject-employer, engaged in interstate commerce and subject to the Act of Congress, known as the "Railway Labor Act," shall be liable for contributions based on wages paid by him for services performed for him from January 1, 1936, through April 20, 1936. Beginning April 21, 1936, the amendment excepting services performed for such employer is effective.

9. "Services performed by those engaged as solicitors or agents for Insurance Companies".

Here, the test is not the nature of the employer's business, but is the nature of the services performed. Thus, services performed as solicitors or agents are exempted.

The names of all agents or solicitors for whom exemptions are claimed must be furnished by the employer to the Com- [fol. 40-2] mission either; (1) at the time of filing Status Report 1, (See instructions regarding "Column F" page 11), or thereafter, (2) at the time the next succeeding report is made to the Commission after the hiring of an agent or solicitor.

The following rules govern services rendered to insurance companies, other than services performed by those engaged as agents or solicitors:

(a) Insurance brokers placing insurance with more than one company or engaging in the sale of diversified lines of insurance are deemed independent contractors, on account of whose compensation no contributions are payable under this Act.

(b) Salaried managers of general and branch offices are not deemed independent contractors insofar as their managerial duties and wages are concerned, and contributions shall be paid, based on the wages received by such managers for their managerial duties.

(c) All other employees are "subject" employees.

Contributions.—A subject-employer shall be liable for contributions based on wages paid by him from January 1, 1936, through April 20, 1936, for services performed for him by those engaged as solicitors or agents (except independent contractors) for insurance companies. Beginning April 21, 1936, the amendment excepts services performed by such persons.

[fols. 41–41-1] EXHIBIT "E-2" TO COMPLAINT

Rules and Regulations Relating to the Unemployment Compensation Law of the State of Alabama

[fol. 41-2]

Article 1

Definitions

The following words as used in these Rules and Regulations shall have the following meaning:

100. "The Act" shall refer to and mean the Alabama Unemployment Compensation Law, approved and effective September 14, 1935, as amended April 21, 1936.

101. "Commission" means the Unemployment Compensation Commission established by the Act, or its authorized representative.

102. "Contributions" means the money payments to the Alabama Unemployment Compensation Fund required by the Act.

103. "Fund" means the Unemployment Compensation Fund established by the Act, to which all contributions and from which all benefits are required under the Act.

104. "Employer" means any person, partnership, association, corporation, whether domestic or foreign, or the legal representative, trustee in bankruptcy, receiver, or trustee thereof; or the legal representative of a deceased

person, who or whose agent or predecessor in interest has employed at least eight persons in employment subject to the Act within each of twenty or more calendar weeks in the year 1935 or any subsequent calendar year; provided that such employment in 1935 shall make an employer subject on January 1, 1936, and such employment in any subsequent calendar year shall make a newly subject employer subject for all purposes as of January first of the calendar year in which such employment occurs.

105. "Employee" shall mean any person employed by an employer subject to the Act and in employment subject to the Act.

[fol. 41-3] 106. "Employment" means any employment excepting certain employment set forth in Section 2-g of the Act in which all or the greater part of the person's work (within the continental United States) is or was customarily performed within this State, under any contract of hire, oral or written, express or implied, whether such person was hired and paid directly by the employer or through any other person employed by the employer, provided the employer had actual or constructive knowledge of such contract. Such employment shall include the person's entire employment (in all states, including the District of Columbia).

[fol. 41-4]

Article II

Miscellaneous

Registration of Employers:

200. Every employer of one or more persons, regardless of the number of persons or workers in his employ, or whether exemption is claimed from the provisions of the Act, shall report on forms prescribed and furnished by the Commission and identified as Form SR-1 (Status Report 1).

201. When an employer is in fact subject to the contribution provisions of the law by reason of employment performed for him, failure to receive the reporting form will not affect his status or postpone his liability to make required contributions.

Securing Commission Rulings:

202. Individual companies or individuals affected by the law, are requested to use the following procedure:

Brief the matter, giving all details, and stating the specific question upon which a ruling is desired, and giving a reason therefor.

All requests for information should be forwarded to Hon. J. L. Kaufman, Chairman, Unemployment Compensation Commission, State Capitol, Montgomery, Alabama.

Bankruptcy, Dissolution, etc.:

203. In the event of an employer's dissolution, bankruptcy, adjudicated insolvency, receivership, assignment for the benefit of creditors, judicially confirmed extension proposal or extension, or any analogous situation, contribution payments then or thereafter due under the Act shall have the greatest priority (subsequent to taxes, but at least equal to wage claims) then permitted by law; but the lien of any judgment entered upon any reward shall not be impaired. Employers shall immediately notify the Commission in the event of dissolution, insolvency, bankruptcy, composition, or assignment for the benefit of creditors.

Penalties:

204. Penalties are provided in the Act for the following offenses:

[fol. 41-5] A penalty of twenty to fifty dollars, or imprisonment in the county jail for not more than thirty days or both, for whoever makes a false statement or representation to obtain or increase any benefit or other payment, either for himself, or for any other person.

A penalty of not less than twenty and not more than two hundred dollars, or imprisonment in the county jail for not longer than sixty days, or both, for any employer (of any person in this state) and any officer or agent of an employer, who wilfully makes a false statement or representation to avoid becoming or remaining subject to the Act or to avoid or reduce any contribution or other payment required of such employer under the Act, or who wilfully fails or refuses to make any such contribution or other payment or to furnish any reports required of him, or to appear and testify or produce records as lawfully required, or who makes or requires any deduction from wages to pay all or any portion of the contributions required from employers, or who tries to induce any employee to waive any right under the Act.

A penalty of not less than twenty and not more than fifty dollars, or imprisonment in the county jail for not more than thirty days, or both, for any commission employee who reveals any information, obtained by him from any employer's records, while in the performance of his official duties.

Collections of Fines and Penalties:

205. On complaint of the Commission the fines specified or provided in this article may be collected by the State in an action of debt. All fines thus collected shall be paid to the Unemployment Administration Fund.

General Administration:

206. The offices of the Alabama Unemployment Compensation Commission will be open for business from 8:30 A. M. until 5:00 o'clock P. M. on all week days, except legal holidays, and Saturdays. On Saturdays the office hours will be from 8:30 o'clock A. M. until 12:00 o'clock noon.

207. Transmitting envelopes, bearing required documents, remittances, or reports must bear a postmark of not later than midnight of the day specified in order not to be considered delinquent.

[fol. 41-6] 208. All checks or money orders intended for the Commission shall be made payable to the "Alabama Unemployment Compensation Commission".

Effect of Pension Plans or Workmen's Compensation Laws:

209. The obligation of any employer under the provisions of the Act shall not be affected by any other Unemployment Compensation Insurance or Pension Plan or by any other similar plan.

Garnishment and Assignment of Benefits:

210. Benefits which are due or may become due under the Act shall not be assignable before payment; and when awarded, adjudged, or paid shall be exempt from all claims of creditors and from levy, execution and attachment or other remedy now or hereafter provided for recovery or collection of debt, which exemption may not be waived.

Waiver of Rights:

211. No agreement by an employee to waive or assign his right to benefits or any other right under the Act shall be valid.

212. No agreement by an employee to pay all or any portion of the contributions required under the Act from employers shall be valid.

213. No employer shall make or require any deduction from wages to finance the contributions required of him, or require any waiver by an employee of any rights set forth in the Unemployment Compensation Law.

Future Regulations:

214. Rules and Regulations dealing with other portions of the Act, as well as the portions already covered, will be issued in due time.

Benefits, Appeals, etc.:

215. Inasmuch as benefits will not be payable until January 1, 1938, and inasmuch as questions concerning benefit credits will not arise until after January 1, 1937, rules and regulations concerning the same are not made at this time. They will be made in ample time, and full publicity given them.

[fol. 41-7]

Article III

Employer

300. "Employer" under the Act includes the following types of employing units; a person, a partnership, an association, corporation, either domestic or foreign, or the legal representative, trustee in bankruptcy, receiver or trustee thereof, or the legal representative of a deceased person.

Affiliated Employers:

301. In determining whether an employer in Alabama employs enough persons to be subject to the Act for contributions, and in determining with respect to what persons such employer is liable for contributions, all persons employed in Alabama by such employer in all of his several places of employment maintained within the State shall be treated as employed by a single "employer".

302. Where an employer of any person either directly or through a holding company or otherwise has a majority control or ownership of otherwise separate business enterprises employing persons in the state, all such enterprises shall be treated as a single employer for the purpose of coverage and contribution.

Employers Subject for Contribution:

303. An employer is subject to the Act for contribution from January 1, 1936, if he or his agent or predecessor in interest employed at least eight (8) persons in employment subject to the Act within each of some twenty or more weeks during the year 1935. The eight persons in any employment subject to the Act need not have been the same persons from week to week. Any calendar week in which the employer had eight or more employees (example: two on Monday, two different persons on Tuesday, and four other persons on Wednesday) will be counted as one of the twenty weeks. The twenty weeks need not be consecutive, but may be any twenty weeks in the calendar year, regardless of their order.

304. In any year subsequent to 1935, such employment during that year as is set out in Section 303 of this Article shall make an employer subject to the Act for contributions and for all purposes as of January first of the calendar year in which such employment occurs.

[fol. 41-8] Employees of Subcontractor:

305. In determining liability for contributions an employer (of any person) shall, whenever he contracts with any contractor or subcontractor for any work, which is part of his (the employer's) usual trade, occupation, profession or business, be deemed to employ all persons employed by such contractor or subcontractor on such work. However, when any such contractor or subcontractor elects to beome fully subject to the Alabama Unemployment Compensation Law, and agrees in writing with the employer to accept exclusive liability for contributions on account of all persons employed by him on the employer's work, the employer is relieved of liability for contributions on account of such persons.

Such voluntary election and agreement to accept exclusive liability must be in a form approved by the Commission.

When the transfer of contribution liability has been approved by the Commission, the employer is to take no account of the employees of a contractor or subcontractor in making his contributions.

306. Irrespective of whether or not a contractor or subcontractor is himself subject to the provisions of the Act and of whether or not he has agreed to accept exclusive liability for the payment of contributions, in determining whether or not any person or concern is an employer as defined in Section 2-f of the Act, such person or concern, whenever he contracts with any contractor or subcontractor for any work which is part of the usual trade, occupation, profession or business of such person or concern, shall be deemed to employ all persons employed by such contractor or subcontractor on such work, and, in computing the number of employees of such person or concern during any week, there shall be included, in addition to the employees of such person or concern during such week, the employees of such contractor or subcontractor who perform such work during such week period. Any provision of the rules or instructions heretofore issued by the Commission, inconsistent with the foregoing rule, is hereby repealed.

NOTE.—The next preceding paragraph amends Information and Instructions No. 1, Employees of Independent Contractor, page 5, lines 1 through 6.

A form of acceptance of exclusive liability, satisfactory to the Commission, will be forwarded upon request.

[fol. 41-9] Minors and Aliens as Employers:

307. The Act applies to minors as well as to adults who are employers. It also applies to aliens, who are employers.

Non-Resident Employers:

308. The Act applies to resident and non-resident employers alike, so long as the employees customarily perform all or the greater part of their work (within the continental United States) within the State of Alabama.

Employee as an Employer:

309. A person may be the employer of persons, and the employee of another.

Sole Proprietors:

310. When an employer is organized as an individually conducted business (as distinct from a partnership, association, or corporation) the sole owner (Proprietor) of such individual business shall be considered to be the "employer", and shall not be deemed in "employment" for the purposes of the Act.

Partners:

311. Where an employer is organized as a partnership, the bona fide partners shall with respect to such enterprise be treated as "employers" rather than "employees", and bona fide partners are not to be considered as in employment for the purpose of the Act.

Employer Ceasing to be Subject to the Act:

312. Any employer subject to the Act shall cease to be subject to the same only upon a written application by him, and after a finding by the Commission that he has not within any calendar week within the last completed calendar year employed eight or more persons in employment subject to the Act. The words "after a finding by the Commission" simply mean that until the Commission ascertains it to be a fact that the employer has not within any calendar week within the last completed calendar year employed eight or more persons in employment subject to the Act, such employer remains subject to the Act.

[fol. 41-10] Employer Electing to Become Subject to the Act:

313. Any employer (of any person or any number of persons within the State) not otherwise subject to the Act upon the filing by such employer with the Commission his election to become fully subject hereto for not less than two calendar years, shall become subject hereto. This election is subject to the approval of the Commission, but the Commission will approve all elections except for good cause.

Any form of election if sufficient, will be accepted. If request is made to the Commission a form approved by the Commission will be forwarded.

[fol. 41-11] Article IV

Employee

Contract of Hire:

400. The Act uses the term "contract of hire" in connection with an employee's work. This is a legal term, which describes the relationship ordinarily called by the law "master and servant". Therefore, the ordinary rules of law relative to "master and servant" will apply to questions as to who are "employees" under the Act.

Who are Employees:

401. Under Section 2 (e) of the Act "employee" is defined to be "any person employed by an employer subject to the Act and in employment subject to the Act". "In employment subject to the Act" simply means that a person does work, under a contract of hire, the greater part or all of which work is customarily performed within this State, and the nature of which work is not exempted by the Act. And a person, firm, corporation, etc., is subject to the Act, generally speaking, if within each of twenty weeks during the current or preceding year he or it employed at least eight persons to do work under contracts of hire, the greater part or all of which work was customarily performed within the State.

Independent Contractors:

402. A person himself performing services pursuant to a contract which does not establish an employer-employee (master and servant) relationship is not "in employment" within the meaning of the Alabama Unemployment Compensation Act. The Commission will endeavor to interpret and apply the governing principles of the Alabama law to all claims that an employer-employee (master and servant) relation does not exist with respect to the services of a particular individual. Such claims must, in every instance, be supported by a full statement of all relevant facts from the reporting employer.

What Constitutes an Independent Contractor:

403. There is no hard and fast rule as to what constitutes an independent contractor. Each case must depend on its

own facts. Generally, when the employer retains the right to direct the manner in which a thing is to be done, as well [fol. 41-12] as the result to be accomplished, the relationship is that of employer-employee. It is not necessary that the employer actually direct the manner, but it is sufficient if he retains the right to do so. Where the employer has the right to direct not only what shall be done, but also how it shall be done, then the relationship is that of employer-employee and not that of independent contractor.

Independent or Subcontractor With Employees.

404. Where an employer of any person contracts for work to be performed in the usual trade, occupation, profession or business of the employer, the employees of the contractor are deemed to be the employees of the employer, unless and until the independent contractor himself accepts exclusive liability for contributions on behalf of his own employees. The employer may enter into an agreement divesting himself of his liability under the law only with such contractors as are subject or have elected to become subject to the contribution provision of the law. A contractor or sub-contractor not subject to the Act may elect to become subject thereto by filing written notice of such election with the Commission. Such election must be for a period of not less than two calendar years (Section 2-f of the Act). Such a written application to the Commission shall be upon the form prescribed by the Commission and shall be effective only when the Commission has approved such application and notified the applicant. With such contractors, an employer may enter into an agreement, as part of his contract, which shall provide (1) for the certificate of the contractor that he has established his election with the Commission (citing date) and (2) the agreement of the contractor to accept exclusive liability for contributions in behalf of all his employees who are engaged on any work, under the contract.

405. What constitutes employment within the usual trade, occupation, profession or business is a matter for determination by the Commission from the particular facts in each case, to be presented to the Commission by the employer. Before an employer may claim exemption of an independent contractor with employees because such con-

tractor is not engaged in the business of the employer, he must secure a finding from the Commission to such effect. Usual trade, occupation, profession or business will not generally include maintenance and construction work by independent contractors, when such is not the type of enterprise of the employer, nor any task in which the employer himself does not have employees similarly engaged.

[fol. 41-13] Newsboys and Distributors:

406. Newsboys and distributing carriers of newspapers are deemed independent contractors, and as such are not liable as employees under the Act for payment of contribution upon their earnings.

Employment by Assistants and Other Employees:

407. Where an employee such as a manager of a branch store employs helpers, errand boys, etc., they become the employees of the principal employer, and contribution must be paid upon their wages.

Barbers:

408. Barbers, working strictly on a commission basis, furnishing their own instruments, etc., but using the employer's chairs and sanitary equipment are not independent contractors, but are employees, on account of whose wages contributions are payable.

Directors of Corporations:

409. Directors of an association or corporation who perform no duties other than periodic attendance at directors' meetings, and receive only customary and reasonable directors' fees, are not employees, and such reasonable directors' fees may be excluded from the employer's "defined payroll" for contribution purposes. Corporations claiming exemption for directors' fees are required to furnish the Commission with a detailed statement showing number of meetings of the Board of Directors in the year 1935, together with number of Directors that year, and fees received by each, as well as complete data on the duties performed by each director.

Officers of a Company or Corporation:

410. If officers of a company or corporation perform services for such company or corporation under any contract of hire, they are employees.

Casual Labor:

411. Labor is casual if it is occasional, incidental and occurs irregularly. It may be in the course of the employer's business or not. In either event employees performing such casual labor under a contract of hire are under the Act, and contributions must be made on their wages.

[fol. 41-14] Physicians, Lawyers:

412. Physicians, lawyers, dentists, veterinarians, public stenographers, auctioneers, and other individuals, firms or associations who follow a regular and distinct trade, business or profession in the course of which they offer their services to the public to be performed independently of the control of the employer, are independent contractors. Such persons as are herein set out who perform paid services and are on a salary basis, are not deemed independent contractors insofar as such services are concerned.

Purchase of Finished Products:

413. Where a person, firm, corporation, etc., bona fide contracts for the purchase of finished products and does not have the right to control, and does not actually control the manner and method of creating the finished product, and does not actually hire and discharge the persons creating the finished products, contracting to pay a specified amount of money for delivery of the finished product, a relationship of employer-employee does not exist between the parties to such contract of purchase. Neither are the employees of the person, etc., furnishing the finished product considered as the employees of the purchaser.

Example: Where a railroad or mining company contracts for the purchase and delivery of cross-ties or lumber, the same to be according to certain specifications.

Rehabilitation Workers for Independent Contractors:

414. Rehabilitation workers in the employ of independent contractors, even though government contractual provisions require the employment of such people, are not excluded from contributions to the fund. The service they render is not "performed in the employ of the United States Government or of any instrumentality of the United States".

Water-Front Activities:

415. Services performed in and about water-front activities are not excluded from the operation of the Act, unless such services are performed as an officer or member of a crew of a vessel on the navigable waters of the United States. Thus, stevedore services, services performed in loading and unloading ships are within the Act. Ship repairing, unless done in the course of his usual employment by a member of the crew of the vessel repaired, is within the Act.

[fol. 41-15] Local Concerns With Workers Performing All of Their Service Out of the State, and No Workers Within This State:

416. Local concerns which hire workers all of whom customarily perform all or the greater portion of their services outside of the State of Alabama do not make contributions to the Alabama Unemployment Compensation Fund.

Interstate Services:

417. No person required to make payments under the Act shall be relieved from compliance therewith on the ground that he is engaged in interstate commerce, except as is set out in Section 509 of these Rules and Regulations, (Example, railroad employees).

Extra Help:

418. Extra workers employed only on Saturday or during rush seasons shall be counted in determining whether an employing unit had in its employ eight or more persons during each of twenty weeks of a calendar year. Contributions must be paid, based on wages payable to such workers.

[fol. 41-16] Article V

Employment

"Employment Under the Act" or "Defined Employment":

500. "Employment under the Act" or "Defined Employment", with certain exceptions set forth in amended Section 2-g means (Section 2-g of the Act) "any employment in which all or the greater part of the person's work (within the continental United States) is or was customarily performed within this State, under any contract of hire, express or implied, whether such person was hired and paid directly by the employer or through any other person employed by the employer, provided the employer had actual or constructive knowledge of such contract. Such employment shall include the person's entire employment (in all states, including the District of Columbia)".

Place Where Contract Entered Into:

501. The place where the contract for services is entered into, and the citizenship or residence of the employee or the person who employs him are immaterial. Thus, the employee and the person who employs him may be citizens and/or residents of a foreign country, and yet, if the employee under such contract actually performs all or the greater part of his services within this state, there is to that extent an "employment" within the meaning of the Act.

Employees Performing Services Excepted From the Act:

502. Even though the services of the employee are performed within the State of Alabama, if they are in employment excluded from coverage by the provisions of Section 2 (g), Sub-sections 1 to 8, both inclusive, of the Act, they are excluded for the purpose of (1) determining whether a person employs sufficient number of individuals to be an employer subject to the Act, and (2) of computing the total wages payable with respect to employment during the calendar year.

Excepted Employment

The Term "Employment" (Section 2-g of the Act) Shall Not Apply to:

Agricultural Labor:

503. The term "agricultural labor" includes all services performed by an employee in connection with:

[fol. 41-17] (a) The cultivation of soil, the harvesting of crops, or the raising, feeding, or management of livestock and poultry; or

(b) The processing on the farm of articles from such materials, only, as in their raw or natural state are produced on that farm, also the packing or packaging thereon and transportation therefrom, and the marketing, of those raw materials or articles. Such services do not constitute "agricultural labor", however, unless they are performed by an employee of the owner or tenant of the farm, and unless such processing, packing, packaging, transportation, or marketing is carried on as an incident to ordinary farming operations as distinguished from manufacturing or commercial operations.

As used herein the term "farm" embraces the farm in the ordinarily accepted sense, and includes stock, dairy, poultry, fruit and truck farms, plantations, ranches, and orchards.

Forestry or lumbering is not included in the exception.

Domestic Service in a Private Home:

504. A person who performs service of a household nature, in or about the private home of his employer, is engaged in domestic service within the meaning of the Act. However, services usual to a household shall not be deemed within the exclusion if performed in or about hospitals, apartments, rooming or lodging houses, fraternity houses, private schools, clubs, hotels, or any similar establishment.

A private home is the fixed place of abode of an individual or family. In general, services of a household nature in and about a private home include services rendered by cooks, maids, butlers, valets, laundresses, furnacemen,

gardeners, footmen, grooms and chauffeurs of automobiles for family use.

Services Performed as a Bar Pilot or as an Officer or Member of the Crew of a Vessel on the Navigable Waters of the United States:

505. The expression "navigable waters of the United States" means such waters as are navigable in fact and which by themselves or their connection with other waters form a continuous channel for commerce with foreign coun- [fol. 41-18] tries or among the States. The word "vessel" includes every description of watercraft, or other contrivance, used as a means of transportation on water. It does not include any type of aircraft.

The expression "officers and members of the crew" indicates the master or officer in charge of the vessel, however designated, and every individual subject to his authority serving on board, and contributing in any way to the operation and welfare of the vessel. The exception extends for example, to service rendered by the master, mates, pilots, pursers, surgeons, stewards, engineers, firemen, cooks, clerks, carpenters, deck hands, porters, chambermaids, and fishermen, oystermen and shrimpers on vessels. Services of longshoremen and others who work in connection with loading or unloading vessels, are not within the excepted class.

Services Performed by an Individual in the Employ of His Son, Daughter, or Spouse, and Services Performed by a Child Under the Age of Twenty-One Years in the Employ of His Father or Mother:

506. Family exclusions from the provisions of the law are specifically limited to those family relationships enumerated in Section 2-g (4) of the Act.

Government Employees:

507. This exclusion extends to every service performed by an individual in the employ of the United States, the several States, the District of Columbia, Alaska, or Hawaii, or any political subdivision or instrumentality thereof (counties, cities, towns, etc.); including every unit or agency

of government without distinction between those exercising functions of a governmental nature, and those exercising functions of a proprietary nature.

Services performed by employees of National Banks and Federal Reserve Banks are within the exception. State Banks that are members of the Federal Reserve System do not come within this exception.

Service Performed in the Employ of a Corporation, Community Chest, Fund, or Foundation, Organized and Operated Exclusively for Religious, Charitable, Scientific, Literary, or Educational Purposes, or for the Prevention of Cruelty to Children or Animals, no Part of the Net Earnings of Which Inures to the Benefit of Any Private Shareholder or Individual:

508. Services performed for non-profit institutions devoted to certain purposes are excluded from defined em- [fol. 41-19] ployment by Section 2-g (7) of the Act. To qualify for the exemption therein specified, an organization must establish with the Commission its right to exclusion. In all cases, to establish its status, the organization must meet two tests:

It must be organized and operated exclusively for one or more of the specified purposes; and

Its net income must not inure, in whole or in part, to the benefit of private shareholders or individuals.

These tests are similar to those applied by the Bureau of Internal Revenue to organizations claiming exemptions from the Federal Income Tax law. In interpreting employer status, the Commission will be guided by the interpretations of that Bureau, insofar as they are not inconsistent with the laws of Alabama. If a copy of a ruling from the Bureau of Internal Revenue exempting the organization from Federal Income Tax liability does not accompany its claim for exclusion submitted to the Alabama Unemployment Compensation Commission, such claim must be supported by a certified copy of the Articles of Incorporation (or Association) and an affidavit disclosing:

Sources of income.

An operating statement and financial statement covering the most recently completed fiscal year.

The actual activities (as distinct from purposes as set out in the Articles of Incorporation).

If a hospital, whether non-pay patients are accepted, with relative number of pay and non-pay patients; or such accounts as would disclose the relation.

When an organization has established its status with the Commission, it need not thereafter make any further report unless it changes the character of its organization or the purposes of its operation. The Commission however, may inquire into its status, and ascertain whether it is observing the conditions upon which its classification is predicated.

Service Performed in the Employ of a Carrier Engaged in Interstate Commerce and Subject to the Act of Congress Known as the Railway Labor Act:

509. Service performed in the employ of a carrier engaged in interstate commerce and subject to the Act of [fol. 41-20] Congress known as the Railway Labor Act, as amended or as hereafter amended, is excepted from the Act from and after April 21, 1936. The test of the exception is not the nature of the services performed by an employee, but is (1) Whether the carrier-employer is engaged in interstate commerce and (2) Is subject to the Railway Labor Act. It is obvious that carriers engaged in interstate commerce, other than railroads, are not subject to the Railway Labor Act. Thus services performed for buses and bus lines engaged in interstate commerce are not exempted.

Service Performed by Those Engaged as Solicitors or Agents for Insurance Companies:

510. Service performed by those engaged as solicitors or agents for insurance companies. Here, there are two tests. They are: (1) the service must be performed for an insurance company, and (2) it must be performed by persons engaged as solicitors or agents.

511. The following rules govern services rendered to insurance companies, other than services performed by those engaged as solicitors or agents:

Insurance brokers placing insurance with more than one company or engaging in the sale of diversified lines of insurance are deemed independent contractors, on account of whose compensation no contributions are payable under the Act.

Salaried managers of general and branch offices are not deemed independent contractors insofar as their managerial duties and wages are concerned, and contributions shall be paid, based on the wages received by such managers for their managerial duties.

All other salaried employees are "subject" employees.

Nurseries:

512. The exception "agricultural labor" extends to and includes services performed in the cultivation of a nursery, in the same manner and subject to the same conditions as are set out under the definition "agricultural labor".

[fol. 41-21] Article VI

Wages

600. The term "Wages" means all remuneration for employment, whether payable in money or something other than money. The name by which remuneration is designated is immaterial. Thus, salaries, commissions on sales (except as is otherwise herein set out), fees, and bonuses, are wages within the meaning of the Act if payable by an employer to his employee as compensation for services not excepted by the Act.

The basis upon which the remuneration is payable, the amount of remuneration, and the time of payment, are immaterial in determining whether the remuneration constitutes "wages". Thus, it may be payable on the basis of piecework, or a percentage of profits; and it may be payable hourly, weekly, monthly or annually.

The medium in which the remuneration is payable is also immaterial. It may be payable in cash or in something other than cash, such as goods, lodging, food, and clothing. Ordinarily, facilities or privileges (such as entertainment, cafeterias. restaurants, medical services, or so-called "courtesy" discounts on purchases), furnished or offered by an employer to his employees and the immediate members of his employees' families, are not consid-

ered as remuneration for services if such facilities or privileges are offered or furnished by the employer merely as a convenience to the employees or as a means of promoting the health, good will, contentment or efficiency of his employees.

Exclusion from Computation of Wages:

601. Excluded from the computation of wages is all remuneration payable by an employer to an employee for services which are excepted by the Act, or all or the greater portion of which services are customarily performed outside of the State of Alabama.

Dismissal Wages:

602. Payment to an employee of so-called dismissal wages and vacation allowances constitute wages.

Traveling Expenses:

603. Amounts paid to traveling salesmen or other employees as allowances or reimbursement for traveling or other expenses incurred in the business of the employer constitute wages only to the extent of the excess of such amounts over such expenses actually incurred and accounted for by the employee.
[fol. 41-22] Allowances to employees for expenses paid to them with their wages or salaries should be included in the payroll unless such expenses are regularly and reasonably segregated on the books of the employer.

Premiums on Life Insurance:

604. Generally, premiums paid by an employer on a policy of life insurance covering the life of an employee constitute wages, if the employer is not the beneficiary. However, premiums paid by an employer on policies of group insurance covering the lives of his employees are not wages, if the employee has no option to take the amount of the premiums instead of accepting the insurance.

Deductions by Employer from Remuneration of Employees:

605. Amounts deducted from the remuneration of an employee by an employer constitute wages paid to the em-

ployee at the time of the deduction. It is immaterial that the Act, or any Act of Congress, or any law of any state, requires such deductions and the payment of the amount thereof to the United States, a State, or any political subdivision thereof.

Payments by Employers Into Employee's Funds:

606. Payments made by an employer into a stock bonus, pension, or profit-sharing fund constitute wages if such payments inure to the exclusive benefit of the employee, and may be withdrawn by the employee at any time, or upon resignation or dismissal, or if the contract of employment requires such payment as part of the compensation. Whether or not under other circumstances such payments constitute wages depends upon the particular facts of each case.

Sick Benefits:

607. In the absence of a contract requiring the employer to do so, sick benefits paid by an employer to his employees are not wages, and shall not be included with the amount of wages reported for tax purposes. Such payments by the employer are in the nature of a gift and are not remuneration for services rendered.

Pension Payments:

608. Pensions paid to retired employees who perform no service for the employer are exempt from contributions.

Commissions on Installment Purchase Contracts:

609. Where commissions are paid to salesmen each time a purchaser makes a payment on an installment under an in- [fol. 41-23] stallment purchase contract, and such installments are due and payable over a period exceeding one year, the contributions required of the employer and employee shall be payable only on those commissions actually paid during the calendar year.

Tips and Other Gratuities:

610. Tips and other gratuities received by an employee from other than his employer during the course of his employment are not a part of the wages paid him by his employer for services rendered; therefore, no contribution by the employer or by the employee shall be made thereon.

Allowance for Meals:

611. Where not agreed upon by the employer and employee, the minimum value of board furnished an employee as part of his remuneration is hereby declared to be as follows: .

Breakfast	20 cents.
Dinner	20 cents.
Supper	20 cents.

No agreement between the employer and employee shall reduce the value of said meals, for contribution purposes, below the amounts herein set out.

Allowance for Room:

612. Where not otherwise agreed upon by the employer and employee, the minimum value of lodging furnished an employee as part of his remuneration is hereby declared to be $1.50 per week. No agreement between the employer and employee shall reduce the value of such lodging, for contribution purposes, below the amount herein set out. Where a cash value of less than $1.50 per week for lodging furnished an employee by his employer as part of his remuneration has been agreed upon by the employer and employee, for purposes of determining the amount of contribution to be paid upon this non-cash remuneration, the cash value shall be deemed to be not less than $1.50 per week.

In the event the employee's family lives with the employee, no added cash value shall be placed upon the employee's lodging because of this fact.

Bonus Defined:

613. The term "Bonus" included in the Act is hereby defined to mean a sum paid to, or merchandise or other thing of value received by an employee from an employer for services performed, or upon a consideration in addition to or in excess of that which would ordinarily be paid. It [fol. 41-24] is not a gift or a gratuity. A bonus paid to an employee during any calendar year in consideration of services performed by such employee during the preceding calendar year shall be deemed a part of the wages paid to such employee during the year in which it is earned.

Railroad Passes:

614. Passes issued by a railroad company or any other common carrier to its employees and the employees' immediate families, to be used when not engaged on business for the company, and not provided for in the contract of employment, are gifts and not wages. No contributions shall be made on the value of the same.

Employee's Group Insurance:

615. Any contribution made by the employer toward the cost of group insurance for his employees is not a payment for any services rendered, and therefore is not a wage if the employee has no option to take the amount of the premiums instead of accepting the insurance. Consequently, the amount of such contribution by the employer is not to be included with the amount of total wages for reporting purposes.

616. Where an employee makes any contribution toward this group insurance, the amount of his unemployment compensation insurance contribution shall be based upon his wages before such deduction is made.

Part-Time Employees:

617. There is no distinction in the Act between full-time employees and part-time employees. Contributions must be paid, measured by wages payable to each.

Sole Proprietor Drawing Salary:

618. If an employer is organized as a sole proprietor, any salary he might draw from the business is not subject to contribution, for he is not an employee. What he might draw as a salary is profits from his business.

Garnishment of Wages.

619. Employee contributions shall not be subject to levy, execution, garnishment, or assignment.

[fol. 41-25]

Article VII

Contributions

Employer Contribution:

700. On and after the first day of January, 1936, contributions shall accrue and become payable by each em-

ployer then subject to the Act. (Note: For determining what employers were subject to the Act on January 1, 1936, see Article III, Section 303 of Rules and Regulations.)

701. Thereafter (after January 1, 1936) contributions shall become payable by any new employer after the date on which he becomes newly subject to the Act, but shall be computed upon total wages payable since January 1st of the year in which he becomes subject to the Act. (Note: For determining the date on which a person, corporation, association, etc., becomes newly subject to the Act, see Article III, Section 304. It must be remembered that a newly subject employer becomes liable for contributions as of January 1st of the year in which it is definitely determined that he is newly subject to the Act). Contributions of employees of an employer becoming newly subject in any calendar year are payable only from and after the end of the 20th week within which the employer had in his employ eight or more individuals in employment subject to the Act.

702. A subject-employer, engaged in interstate commerce and subject to the Act of Congress, known as the "Railway Labor Act", shall be liable for contributions based on wages paid by him for services performed for him from January 1, 1936, through April 20, 1936.

Beginning April 21, 1936, an amendment to the State Act excepting services performed for such employers is effective.

703. Any insurance company which was a subject-employer on January 1, 1936, under the provisions of the Act before Amendment of April 21, 1936, shall be liable for contributions on wages payable for services performed for it by employees engaged as solicitors or agents from January 1, 1936 through April 20, 1936.

Employer Contributions. Rates:

704. Every employer shall pay contributions equal to the following percentage of the total wages payable (regardless [fol. 41-26] of the time of payment) with respect to employment by him during such year:

(1) With respect to employment during the calendar year 1936 the rate shall be ninety one-hundredths (.90) of one per centum;

(2) With respect to employment during the calendar year 1937 the rate shall be one and eighty-one-hundredths (1.80) per centum;

(3) With respect to employment during the calendar year 1938 and thereafter the rate shall be two and seventy one-hundredths (2.70) per centum, except as is set out in the next succeeding rule (Rule 705)

Future Rates, Based on Benefit Experience:

705. Based on actual contribution and benefit experience of employers under the Act, the Commission shall (in the year 1941, and in each calendar year thereafter) classify employers in accordance with said experience; and shall determine for each employer the rate of contribution which shall apply to him throughout the entire calendar year, pursuant to said experience and classification. Rates of contribution shall depend on the unemployment hazard in the employer's business.

Employee Contribution:

706. Beginning May 1, 1936, each employee of an employer who was then subject to the Act, who is engaged in employment subject to the Act shall contribute one per-centum of his wages to the fund.

707. When in any current calendar year an employer becomes subject to the Act by reason of the fact that he has employed eight or more persons in employment subject to the Act during twenty weeks, each employee shall be and become liable for employee contributions of one per cent (1%) of wages payable from the beginning of the week next following the completion of the 20th week in which such employer employed eight or more persons in employment subject to the Act. Such employer shall withhold such employee contributions and make payment thereof to the Commission in accordance with the rules of the Commission.

"Defined Payroll".—"Total Wages Payable".

708. These terms mean the payroll on which contributions are based. In arriving at the "defined payroll" or [fol. 41-27] "total wages payable", the entire amount of wages payable to all persons performing any work for the employer is taken. From that amount should be de-

ducted the wages paid to persons not subject to the Act for contributions. The result obtained is the "Total Wage" or "Defined Payroll".

709. The persons whose wages are excluded in the computation may be excluded because:

They are specifically exempted under Section 2 (g) of the Act. (Agricultural labor, government work, etc.) or

They do not customarily perform all or the greater part of their services within the State of Alabama, or

They may be employees of a contractor or subcontractor who has assumed exclusive liability for contributions based on wages paid his employees for services within the usual trade, occupation, profession or business of the employer, or

They are not performing services under a contract of hire, express or implied.

Reference to Exclusion on Reports:

710. Where the right to exclusion from contribution on behalf of any person performing a particular service has been claimed and substantiated on any previous report of an employer, citation of the date of the employer's letter to the Commission originally substantiating the claim, on subsequently monthly Supplemental Reports of Payroll Exclusions, is sufficient. Such a citation is sufficient to cover not only the original person performing the particular service, but may also apply to another person or persons performing the same service subsequently.

Due Dates of Contribution Remittances. Penalty for Delay in Transmission.—In accordance with the authorization in Section 4, sub (a) and sub (d) of the Act, the Commission hereby prescribes the following regulations with respect to the collection of employer and employee contributions required under the law.

711. Employer contributions shall accrue each month on the "defined payroll" (See this Article No. 708) of the employer, and the accruals shall mature on the first day of the following month. The matured sums shall be paid on or before due dates, which will be assigned to each employer. In assigning these due dates the Commission will take into consideration the business location, number of [fol. 41-28] employees on the payroll and other reporting factors. If such due date is not convenient to the employer,

upon submission of acceptable reasons the Commission will assign a due date more nearly the convenience of the employer. Until and unless an employer has received an assigned due date, his due date will be the 15th day of the month following the month for which the contributions had accrued and were payable. The period elapsing between the maturity date of the contributions (i. e., the first day of the month following the month of accrual) and the assigned due date, is deemed sufficient time for the employer to make the required payments.

712. In the case of an employer who becomes newly subject to the law in any calendar year by reason of employment performed for him within such year, his first contribution payment shall mature on the first day of the month following that month wherein occurred the 20th calendar week within which he had eight or more employees. Such first contribution payment of an employer thus becoming newly subject in the course of a year shall include contributions on his "defined payrolls" from the first of the calendar year. (The law provides such retroactive contribution payments (Section 2-f, in order that employers may secure the full off-set against the excise tax, Title IX, Social Security Act.)

713. Employee contributions required under the Unemployment Compensation Law and withheld from wages by the employer pursuant to direction in Section 4 (d) shall be due and payable by the employer at the same time his contributions are due and payable. (See Nos. 711 and 712 above.) However, in the case of an employer becoming subject in the course of a calendar year, there shall be no withholding from wages of his employees and there shall be no contributions required of his employees except for services performed after the expiration of the 20th calendar week within which the employer shall have eight or more employees in the calendar year, except in case of employers electing to become subject to the Act, in which case contributions shall be due from both the employer and his employees as of the date the Commission approves the application of the employer electing to come under the Act.

714. The interest prescribed by the Unemployment Compensation Law on delinquent payments will be computed from the day following the due date. The Law prescribes

interest at the rate of one per cent per month. (See Section 14-a of the Act). Employer shall be held responsible for interest on past due contributions both with respect to (1) [fol. 41-29] employer contributions and (2) employee contributions. (In computing delinquency, any part of one day shall be considered as a whole day).

Fractions of a Cent:

715. Fractions of a cent less than one half shall be ignored in making deductions and payments for contributions. A fractional part, one half or greater than one half, shall be considered as one cent for the same purposes. An employer shall transmit to the Commission on behalf of each employee the exact amount deducted from the employee's wages.

Over-Payment and Under-Payment of Contributions:

716. If an employer shall make any payment which is in excess of the payments required to be made, to the Fund, the amount of such over-payment will be credited only on the payments due in the month next succeeding that in which the overpayment is discovered. If there is an under-payment, or if it shall be subsequently discovered through an audit or otherwise that contributions accrued have not been paid, the employer shall promptly pay the amounts due with interest on such tardy payments at the rate of one per cent per month, from the date such payments are due.

Method of Payment:

717. The Commission or its agents may receive uncertified checks in payment of the contribution if such checks are collectible at par; that is, for their full amount, without deduction for exchange or other charges. The Commission or its agents will stamp on the face of each check before deposit the words "This check must be paid at par. No protest".

718. Procedure with respect to dishonored checks. If the bank upon which any such check is drawn should, for any reason, refuse to pay it at par the check should be returned through the depository bank and treated as a dishonored check. All expenses incident to the attempt to

collect such check and the return of it through the depository bank must be paid by the drawer of the check, since no deduction can be made from amounts received in payment of contributions.

If any employer whose check has been returned uncollected by the depository bank should fail at once to make the [fol. 41-30] check good, or to pay the amount thereof, the Commission will proceed to collect said contribution. An employer who tenders a check, whether certified or not, in payment of contributions is not released from his obligation until the check has been paid.

719. After a check by any one employer given in payment of contributions required under the Act has been returned by the depository bank unpaid, the Commission reserves the right thereafter to accept from that employer only cash or certified checks.

Deduction of Employee Contribution Where Employee Is Paid More Than Once During Calendar Month:

720. Where an employee is paid daily, weekly, bi-weekly, or upon a fixed term or other basis, or on more terms than one during the calendar month for services performed for the period of the calendar month, the employer must show the deduction of each of his employee's contribution on each payroll, for the period of time covered by said payroll.

Definition of a Month:

721. A "month" as used in the Act and in this regulation has two meanings: (1) In respect to employees paid on a weekly basis, a month is that period covered by all the calendar weeks which end within that calendar month; and (2) In respect to employees paid on any basis except a weekly basis, a month is a calendar month. This rule shall not apply to the month of December during any year.

December Contributions:

722. Contributions for the month of December in each year shall include all unreported wages earned in such month and the current calendar year by employees whether actually paid or not, and further that the first week in the following January shall include only that portion of the week which was not included in the preceding December.

(Note: The law requires that a different rate of contribution be paid on the earnings of each respective calendar year, and it is therefore necessary to make each calendar year a complete unit.)

[fol. 41-31] Article VIII

"All or the Greater Part of the Person's Work":

800. "All or the Greater Part of the Pe-sons Work", etc. Under Section 2 (g) of the Act it is set out that employment means "any employment in which all or the greater part of the person's work (within the continental United States) is or was customarily performed within this state under any contract of hire, oral or written, express or implied, whether such person was hired and paid directly by the employer or through any other person employed by the employer, provided the employer had actual or constructive knowledge of such contract. Such employment shall include the person's entire employment.

801. Employment shall be deemed customarily performed within this State and covered by the Alabama Act under the following conditions:

If the majority of the employees working hours are spent within the state.

If an employee's services are performed elsewhere but incidental to the employee's principal employment within the state.

If the two above paragraphs under 801 are not readily determinable and the employee's headquarters or home station is in this state.

Week:

802. The word "week" as used in these Rules shall mean a calendar week unless "an equivalent period" has been adopted by the employer and such "equivalent period" has been approved by the Commission.

[fol. 41-32] Article IX

Records

Employer's Records:

900. Every employer shall keep true and accurate employment records of all individuals employed by him, including

the hours of employment and the wages payable therefor. Such records shall be open to inspection by the Commission or its duly authorized agents every day except Sundays and legal holidays, between the hours of nine o'clock A. M. and five o'clock P. M.

Record of Number of Hours Worked:

901. Where employees receive wages on the basis of piece-work, the employer is required to keep an accurate record of the actual hours worked weekly by such employees.

Normal Work Week for Traveling Salesmen: Commission Men:

902. The normal work week for traveling salesmen, employees working on a straight commission basis, and traveling auditors, shall be 40 hours a week, for contribution purposes.

Record of Hours Where Employees Hired by the Month:

903. Where employees are hired by the month, it is not necessary to make a record of the exact number of hours worked by said employees. It is sufficient to record on the payroll the normal work week, which is set for such employees.

Computing "Weekly Wage":

904. Where an employees' payroll is on a monthly, mileage, tonnage, commission, trip, or piece-work basis, the weekly wage shall be computed as follows: The monthly wage or monthly compensation divided by 26 and multiplied by 6.

This rule merely takes 26 days in a month, divides the monthly wage into a daily one, and then multiplies by 6 to get a weekly wage.

[fol. 41-33] History of Employee:

905. Inasmuch as benefit credits will not begin to accumulate until January 1937, it will not be necessary during the balance of the year 1936 to keep a history of each employee other than his name, date of starting to work, the wages paid, hours worked, kind of work, and such other facts

as are generally kept by employers. Before January 1, 1937, further instructions and rules will be given regarding the history required to be kept of employees.

Payroll Records of Corporations Operating in More Than One State:

906. If an employer is subject to the Act, and is engaged in business in more than one state, such employer shall maintain payroll records in this state for services performed in this state by his employees, so as to comply with the provisions of the Act and the rules heretofore and hereafter to be adopted by the Commission. If the employer has no branch unit in this state, it will be sufficient to furnish copies of sworn payroll to the Commission.

Reports:

907. The Commission may require from any person such reports in connection with his business, covering employment, employees, wages, hours of employment, and related matters as the Commission deems necessary to the effective administration of the Act.

(A copy of these Rules and Regulations is on file with the Secretary of the State of Alabama, in accordance with Section 10 (b) of the Alabama Unemployment Compensation Law.)

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[fols. 42–42-1] EXHIBIT "E-3" TO COMPLAINT

Alabama General Laws

(Regular Session, 1935)

No. 447.) (S. 395—Stephens.

Act No. 156, April 21, 1936

AN ACT

To create a system of unemployment compensation; to provide for an unemployment compensation fund; to provide

for contributions to such funds; to provide for benefit payments, from such funds; to provide eligibility conditions for such benefits; to provide for the settlement of benefit claims; to provide for judicial review of disputed benefit claims; to create an Unemployment Compensation Commission and to provide for its appointment, compensation and prescribe its powers and duties; to provide for the appointment and compensation of other employees and the maintenance and other expenses of such commission; to authorize reciprocal benefit arrangements with other states or the Federal Government; to prohibit the waiver of rights and benefits arising hereunder; to limit attorney's fees in cases arising under this act; to regulate alienation of benefits; to provide penalties for failure to comply with or violations of this act; to establish an unemployment administration fund; to appropriate funds to maintain the same; and to retain the right to amend or repeal this act.

Be it enacted by the Legislature of Alabama:

Section 1. Short Title.—This Act shall be known and may be cited as the "Unemployment Compensation Law".

Section 2. Definitions.—The following words and phrases, as used in this Act, shall have the following meanings unless the context clearly requires otherwise

(a) "Benefits" means the money payable to an employee as compensation for his wage losses due to unemployment as provided in this Act.

(b) "Commission" means the Unemployment compensation Commission established by this Act, or its authorized representative.

(c) "Contributions" means the money payments to the State Unemployment Compensation Fund required by this Act.

(d) Eligibility.—An employee shall be deemed "eligible" for benefits for any given week of his partial or total unemployment (occurring subsequent to any required waiting period) only when he is not disqualified by any provision of this Act from receiving benefits for such week of unemployment.

[fol. 42-2] (e) "Employee" means any person employed by an employer subject to this act and in employment subject to this Act.

(f) "Employer" means any person, partnership, association, corporation, whether domestic or foreign, or the legal representative, trustee in bankruptcy, receiver, or trustee thereof, or the legal representative of a deceased person, who or whose agent or predecessor in interest has employed at least eight persons in employment subject to this Act within each of twenty or more calendar weeks in the year 1935 or any subsequent calendar year; provided that such employment in 1935 shall make an employer subject on January 1, 1936, and such employment in any subsequent calendar year shall make a newly subject employer subject for all purposes as of January first of the calendar year in which such employment occurs. In determining whether an employer (of any person in the state) employs enough persons to be an "employer" subject hereto, and in determining for what contributions he is liable hereunder, he shall, whenever he contracts with any contractor or subcontractor for any work which is part of his usual trade, occupation, profession, or business, be deemed to employ all persons employed by such contractor or subcontractor on such work, and he alone shall be liable for the contributions measured by wages paid to such persons for such work; except as any such contractor or subcontractor, who would in absence of the foregoing provisions be liable to pay said contributions, accepts exclusive liability for said contributions, under an agreement with such employer made pursuant to general commission rules. All persons thus employed by an employer (or any person) within the State, in all of his several places of employment maintained within the state, shall be treated as employed by a single "employer" for the purposes of this Act; provided, moreover, that where any person, partnership, association, corporation, whether domestic or foreign, or the legal representative, trustee in bankruptcy, receiver, or trustee thereof or the legal representative of a deceased person either directly or through a holding company or otherwise, has a majority control or ownership of otherwise separate business enterprises employing persons in the state, all such enterprises shall be treated as a single "employer" for the purposes of this Act. Any employer subject to this Act shall cease to be subject hereto only upon

a written application by him after a finding by the commission that he has not within any calendar week within the last completed calendar year employed eight or more persons in employment subject hereto. Any employer (of any person within the state) not otherwise subject to this Act shall become fully subject hereto upon filing by such employer with the commission of his election to become fully subject hereto for not less than two calendar years, subject [fol. 42-3] to written approval of such election by the commission.

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(g) "Employment" means any employment in which all or the greater part of the person's work (within the continental United States) is or was customarily performed within this State, under any contract of hire, oral or written, express or implied, whether such person was hired and paid directly by the employer or through any other person employed by the employer, provided the employer had actual or constructive knowledge of such contract. Such employment shall include the person's entire employment (in all states, including the District of Columbia). In the case of all other persons employed partly in this state and partly in other states, the commission is authorized, with the approval of the Governor, to enter into reciprocal arrangements with other states as to the extent the employment of such persons shall be included under this definition. The term "employment" shall not apply to:

(1) Agricultural labor;

(2) Domestic service in a private home;

(3) Service performed as an officer, bar pilot, or member of the crew of a vessel on the navigable waters of the United States;

(4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(5) Service performed in the employ of the United States Government or of an instrumentality of the United States;

(6) Service performed in the employ of a carrier engaged in interstate commerce and subject to the Act of Congress known as The Railway Labor Act; as amended or as here-

after amended. Service performed by those engaged as solicitors or agents for Insurance Companies.

(7) Service performed in the employ of a state, or political subdivision thereof, or an instrumentality of one or more states or political subdivisions;

(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(h) "Employment Office" means that free public employment office (operated by the state) or branch thereof nearest to the employee's place of residence or employment, unless otherwise prescribed by the commission.

[fol. 42-4] (i) An employee's "full-time weekly wage" means the weekly earnings such employee would average from his employment if employed at the "hourly rate of earnings" and for the "full-time weekly hours" applicable to such employee.

(1) The applicable "hourly rate of earnings" shall be determined by averaging the employee's actual earnings for at least three hundred hours of employment by his most recent employers.

(2) An employee's "full-time weekly hours" shall mean the standard maximum weekly hours which can lawfully be worked by the employee (in the employment in question) under any code of fair competition or under any applicable state law specifying lower maximum weekly hours or agreement. Where there is no code, law or agreement applicable, the commission shall determine the employee's full-time weekly hours by averaging his weekly hours for all calendar weeks (in at least the past three months) in which he worked thirty hours or more, or by such equitable method as the commission may by general rule prescribe for determining a full-time standard of not less than thirty weekly hours for benefit purposes. In the case of an employee who is found by the commission, at the time he becomes eligible for benefits, to be unable by reason of physical disability or by reason of continuing personal obligations

(other than employment) to work half the full-time weekly hours which prevail in such establishment for full-time employees, the commission shall determine his full time weekly hours for benefit purposes by averaging his weekly hours for all weeks (in at least the past three months) in which he worked.

(j) "Fund" means the Unemployment Compensation Fund established by this Act, to which all contributions and from which all benefits required under this Act shall be paid.

(k) "Partial Unemployment". An employee shall be deemed "partially unemployed" in any calendar week of partial work if he fails to earn in wages (and/or any other pay for personal services, including net earnings from self-employment) for such week at least one dollar more than the amount of weekly benefits for total unemployment he might receive if totally unemployed and eligible.

(l) "Payroll" means the total amount of all wages payable by the employer to his employees, commencing with wages payable for employment occur-ing after the employer becomes newly subject to this Act.

(m) "Total Unemployment". An employee shall be deemed "totally unemployed" in any calendar week in which he performs no wage-earning services whatsoever, and for which he earns no wages (and no other pay for per-[fol. 42-5] sonal services, including net earnings from self-employment), and in which he cannot reasonably return to any self-employment in which he has customarily been engaged.

(n) "Unemployment Administration Fund" means the Unemployment Compensation Administration Fund established by this Act.

(o) "Wages" means every form of remuneration for employment received by a person from his employer, whether paid directly or indirectly by the employer, including salaries, commissions, bonuses, and the reasonable money value of board, rent, housing, lodging, payments in kind, and similar advantages.

(p) "Waiting-period-unit" means a period (for which no benefits are payable but during which the employee is in

all other respects eligible) consisting of either one week of total unemployment or two weeks of partial unemployment, required as a condition precedent to the receipt of benefits for subsequent unemployment, as prescribed in this Act.

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(q) "Weeks" means calendar week ending at midnight Saturday, or any equivalent period approved by the Commission.

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Section 2(r). "Week of employment" means each calendar week occurring at least one year after contributions first became generally due under this Act from employers then subject hereto, within which the person in question performed any employment subject to this Act for any employer or employers subject to this Act, and was not partially unemployed as defined in Section 2(k).

Section 3. Unemployment Compensation Fund.—(a) Fund.—There is hereby created the Unemployment Compensation Fund, to be administered by the commission without liability on the part of the state beyond the amounts paid into and earned by the fund. This fund shall consist of all contributions and money paid into and received by the fund as provided by this Act, of property and securities acquired by and through the use of moneys belonging to the fund, and of interest earned upon the moneys belonging to the fund.

(b) Withdrawals.—The fund shall be administered in trust and used solely to pay benefits, upon vouchers drawn on the fund by the commission pursuant to general commission rules and no other disbursement shall be made therefrom. Such rule shall be governed by and consistent with any applicable constitutional requirements, but the procedure prescribed by such rules shall be deemed to satisfy (and shall be in lieu of) any and all statutory requirements [fol. 42-6] (for specific appropriation or other formal release by state officers of state moneys prior to their expenditure) which might otherwise be applicable to withdrawals from the fund.

(c) Treasurer.—The commission shall designate a treasurer of the fund, who shall pay all vouchers duly drawn

upon the fund, in such manner as the commission may prescribe. He shall have custody of all moneys belonging to the fund and not otherwise held or deposited or invested pursuant to this act. The treasurer shall give bond conditioned on the faithful performance of his duties as treasurer of the fund, in a form prescribed by statute or approved by the attorney general, and in an amount specified by the commission and approved by the governor. All premiums upon bonds required pursuant to this section when furnished by an authorized surety company or by a duly constituted governmental bonding fund shall be paid from the unemployment administration fund. The treasurer shall deposit and/or invest the fund under the supervision and control of the commission, subject to the provisions of this Act.

(d) Deposit.—All contributions paid under this Act shall upon collection be deposited in or invested in the obligations of the "Unemployment Trust Fund" of the United States Government or its authorized agent, so long as said trust fund exists, notwithstanding any other statutory provision to the contrary. The commission shall requisition from the Unemployment Trust Fund necessary amounts from time to time.

Section 4. Contributions.—(a) Payment.—On and after the first day of January, 1936, contributions shall accrue and become payable by each employer then subject to this act. Thereafter contributions shall accrue and become payable by any new employer on and after the date on which he becomes newly subject to this act. The contributions required hereunder shall be paid by each employer in such manner and at such times as the commission may prescribe.

(b) Rates of Contributions.—Every employer shall pay contributions equal to the following percentages of the total wages payable (regardless of the time of payment) with respect to employment by him during such month:

(1) With respect to employment during the calendar year 1936 the rate shall be ninety-one-hundredths (.90) of one per centum;

(2) With respect to employment during the calendar year 1937 the rate shall be one and eighty one-hundredths (1.80) of one per centum;

(3) With respect to employment during the calendar year 1938 and thereafter the rate shall be two and seventy one-hundredths (2.70) of — per centum.

[fol. 42-7] (c) Future Rates, Based on Benefit Experience.—Based on the actual contribution and benefit experience of employers under this act, the commission shall (in the year 1941 and in each calendar year thereafter) classify employers in accordance with said experience; and shall determine for each employer the rate of contribution which shall apply to him throughout the calendar year, pursuant to said experience and classification. The minimum contributions thus payable to the fund shall in no case amount to less than one and one-half (1½%) per centum or more than four (4%) per centum on the employer's payroll, and the average contribution rate of all employers shall be approximately three (3%) per centum (on payroll) for any calendar year. An employer's contribution rate shall in no case be reduced until there has been at least three calendar years throughout which his employees received or could have received benefits when and if unemployed and eligible. The commission shall investigate and classify industries, employers, and/or occupations with respect to the degree of unemployment hazard in each, taking due account of any relevant and measurable factors, and shall have power to apply any form of classification or rating system which in its judgment is best calculated to rate individually the unemployment risk most equitably for each employer or group of employers and to encourage the stabilization of employment. The general basis of classification proposed to be used for any calendar year shall be subject to discussion, adoption and publication in the manner prescribed in this act for all general commission rules.

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(d) "Contributions by Employees".—Each employee shall contribute to the fund one per centum of his wages earned after May 1st, 1936 and after the date as of which the conditions determining whether or not his employer is or will be subject to the Act have been fulfilled. Each employer shall be responsible for withholding such contributions from the wages of his employees, shall show such de-

duction on his payroll and records, and shall transmit all such contributions to the fund pursuant to general Commission rules.

Section 5. Benefits.—(a) Payment of Benefits.—After contributions have been due under this act for two years, benefits shall become payable from the fund to any employee who thereafter is or becomes unemployed and eligible for benefits, based on his weeks of employment as defined in this act, and shall be paid through the employment offices at such times and in such manner as the commission may prescribe.

(b) Weekly Benefits for Total Unemployment.—An employee totally unemployed and eligible in any week shall [fol. 42-8] be paid benefits (computed to the nearest half-dollar) at the rate of fifty per centum of his full-time weekly wage with maximum benefits of $15.00 per week.

(c) Weekly Benefits for Partial Unemployment.—An employee partially unemployed and eligible in any week shall be paid sufficient benefits so that his week's wages (and/or any other pay for personal services, including net earnings from self-employment and his benefits combined will be two dollars more than the weekly benefit to which he would be entitled if totally unemployed in that week.

(d) One-to-Four Ratio of Benefits to Employment.—The aggregate amount of benefits an employee may at any time receive shall be limited by the number of his past weeks of employment against which benefits have not yet been charged hereunder. Each employee's benefits shall be thus charged against his most recent weeks of employment available for this purpose. Each employee shall receive benefits in the ratio of one-quarter week of total unemployment benefits (or an equivalent amount, as determined by general commission rules, of benefits for partial unemployment or for partial and total unemployment combined) to each week of employment of such employee occurring within the 104 weeks preceding the close of the employees most recent week of employment.

(e) Maximum Weeks of Benefit in any Year.—Benefits shall be paid each employee for the weeks during which he

is totally or partially unemployed and eligible for benefits, based on his past weeks of employment; but not more than sixteen (16) weeks of total unemployment benefits (or an equivalent total amount, as determined by commission rules, of benefits for partial unemployment or for partial and total unemployment combined) shall be paid any employee for his weeks of unemployment occurring within any fifty-two (52) consecutive weeks.

(f) Additional Benefits (One-to-Twenty Ratio).—An eligible employee who has received the maximum benefits permitted under subsection (e) shall receive additional benefits in the ratio of one week of total unemployment benefit (or its equivalent) to each unit of twenty aggregate weeks of employment occurring within the 260 weeks preceding the close of the employee's most recent week of employment, and against which benefits have not already been charged under this act. Such additional benefits shall be charged against the employee's earliest weeks of employment available for this purpose.

[fol. 42-9] Section 6. Benefits Eligibility Conditions.—(a) Employment Requirement. An employee shall be deemed eligible for benefits for any given week of his unemployment only if he has either

(1) accumulated 40 weeks of employment subject hereto within the 104 weeks immediately preceding the date of his application for benefits, or

(2) accumulated 26 weeks of employment subject hereto within the 52 weeks immediately preceding the date of his application for benefits.

(b) Availability and Registration for Work.—An employee shall not be eligible for benefits in any week of his partial or total unemployment unless in such week he is physically able to work and available for work, whenever duly called for work through the employment office. To prove such availability for work, every employee partially or totally unemployed shall register for work and shall file claim for benefits at the employment office, within such time limits and with such frequency and in such manner (in person or in writing) as the commission may by general rule prescribe. No employee shall be eligible for benefits for any week in which he fails without good cause to com-

ply with such registration and filing requirements. A copy of the commission's rules covering such requirements shall be furnished by it to each employer who shall inform his employees of the terms thereof when they become unemployed:

(c) Waiting Period.—Benefits shall be payable to an employee only for his weeks of unemployment occur-ing subsequent to a "waiting period" whose duration shall in each case be determined as follows: An aggregate of three (3) waiting-period-units shall be required of the employee within the fifty-two (52) weeks preceding the start of any given week of unemployment. There shall not be counted toward an employee's required waiting period or periods any week of total or partial unemployment in which he is ineligible for benefits under subsection (b), (d), (e), (f), (g) of this section.

(d) During Trade Disputes.—An employee shall not be eligible for benefits for any week in which his total or partial unemployment is directly due to a labor dispute still in active progress in the establishment in which he is or was last employed.

(e) Voluntary Leaving.—An employee who has left his employment voluntarily without good cause connected with such employment shall be ineligible for benefits for the week in which such leaving occurred and for the three next following weeks.

(f) Discharge for Misconduct.—An employee who has been discharged for proved misconduct connected with his employment shall thereby become ineligible for benefits for [fol. 42-10] the week in which such discharge occurred and for not less than the three nor more than six next following weeks, as determined by the commission in each individual case.

(g) Refusal of Suitable Employment.—If an otherwise eligible employee fails, without good cause either to apply for suitable employment when notified by the employment office, or to accept suitable employment when offered him, he shall thereby become ineligible for benefits for the week in which such failure occurred and for the three next following weeks. "Suitable employment" shall mean any employment for which the employee in question is reasonably

fitted, which is located within a reasonable distance of his residence or last employment, and which is not detrimental to his health, safety or morals. No employment shall be deemed suitable, and benefits shall not be denied under this act to any otherwise eligible employee for refusing to accept new work, under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(2) If the wages, hours, and other conditions of the work offered are substantially less favorable to the employee than those prevailiing for similar work in the locality;

(3) if acceptance of such employment would either require the employee to join a company union or would interfere with his joining or retaining membership in any bona fide labor organization.

Section 7. Settlement of Benefit Claims.—(a) Filing.—Benefit claims shall be filed at the employment office, pursuant to general commission rules.

(b) Initial Determination.—A deputy designated by the commission shall promptly determine whether or not the claim is valid, and the amount of benefits apparently payable thereunder, and shall duly notify the employee and his most recent employer of such decision. Benefits shall be paid or denied accordingly, unless either party requests a hearing within five calendar days after such notification was delivered to him or was mailed to his last known address.

(c) Appeals.—Unless such request for a hearing is withdrawn the claims thus disputed shall be promptly decided, after affording both parties reasonable opportunity to be heard, by such appeal tribunal as the commission may designate or establish for this purpose. The parties shall be duly notified of such tribunal's decision, which shall be deemed a final decision by the commission except in cases [fol. 42-11] where the commission acts on its own motion or, pursuant to general rules, permits the parties to initiate further appeal or review.

(d) Appeal Tribunal.—To hear and decide disputed claims, the commission may establish one or more appeal tribunals consisting in each case of one full-time salaried

examiner (or commissioner) who shall serve as chairman, and of two other members, namely an employer or representative of employers and an employee or representative of employees, who shall each be paid a fee of not more than ten dollars per day of active service on such tribunal (plus necessary expenses) and shall serve until replaced by the commission except that no person shall hear any case in which he is a directly interested party. The chairman of such appeal tribunal may act for it at any session in the absence of one or both other members, provided they have had due notice of such session.

(e) Precedure.—The manner in which claims shall be presented, the reports thereon required from the employee and from employers, and the conduct of hearings and appeals shall be governed by general commission rules (whether or not they conform to common law or statutory rules of evidence and other technical rules of procedure) for determining the rights of the parties. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing shall be taken down by a stenographer, but need not be transcribed unless the disputed claim is further appealed.

(f) Commission Review.—The commission shall have the power to remove or transfer the proceedings on any claim pending before a deputy, appeal tribunal, or commissioner; and may on its own motion (within ten days after the date of any decision by a deputy, appeal tribunal, commissioner, or by the commission as a body) affirm, reverse, change, or set aside any such decision, on the basis of the evidence previously submitted in such case, or direct the taking of additional testimony.

(g) Appeal to Courts.—Except as thus provided, any decision (unless appealed pursuant to general commission rules) shall, ten days after the date of such decision, become the final decision of the commission, and all findings of fact made therein shall (in the absence of fraud) be conclusive; and such decision shall then be subject to judicial review solely on questions of law. Such judicial review shall be barred unless the plaintiff party has used and exhausted the remedies provided hereunder and has commenced judicial action (with notice to the commission)

within ten days after a decision hereunder has become the final decision of the commission in the disputed case.

[fol. 42-12] (h) Oaths and Witnesses.—In the discharge of their duties under this section any deputy, any member of an appeal tribunal, and any examiner, commissioner, or duly authorized representative of the commission shall have power to administer oaths to persons appearing before them, take depositions, certify to official acts, and by subpœnas (requested by the commissioner of and served by the officers of the circuit court having jurisdiction of the parties) to compel attendance of witnesses and the production of books, papers, documents, and records necessary or convenient to be used by them in connection with any disputed claim. Witness fees and other expenses involved in proceedings under this section shall be paid to the extent necessary, at rates specified by general commission rules, from the unemployment administration fund.

Section 8. Court Review. — (a) Within ten (10) days after the decision of the Commission has become final, either party may appeal to the Circuit Court, sitting in the county of the residence of the employee, from such decision. Upon the filing of any such appeal notice thereof shall be served upon the Commission by the appellant. Such appeals shall be heard by the Court at the earliest possible date and shall be given precedence over all other civil cases. It shall not be necessary on any such appeal to enter exceptions to the rulings of the Commission and no bond shall be required for entering such appeal. Said appeal shall be effected by the filing of a brief statement of his grievances by the appellant with the Clerk of said court.

(b) An appeal may be taken from a decision of such Court to the Court of Appeals of Alabama or the Supreme Court of Alabama as now provided by law.

Section 9. Unemployment Compensation Commission.—(a) Organization.—There is hereby created a commission of three members, to be known as the Unemployment Compensation Commission of Alabama. The members of the commission shall be appointed by the Governor within ninety days after the passage of this Act. The Governor shall designate one member as Chairman. The commissioners thus appointed shall serve as designated by the

Governor at the time of appointment, one for a term of two years, one for a term of four years, and one for a term of six years. At the expiration of such initial terms appointments shall be made for a term of six years in each case. Any appointment to a vacancy shall be for the unexpired term in question. No commissioner shall, during his term of office, serve as an officer or committee member of any political party organization.

[fol. 42-13] (b) Salaries.—The Chairman of the commission shall be paid a fixed monthly salary, at the rate of $3,600.00 per year of service, from the unemployment administration fund. The compensation of the associate members shall be ten ($10.00) dollars per day for days actually spent upon the business of the commission, and necessary travelling expenses.

(c) Meetings.—The commission shall meet one day each calendar month. It shall meet such additional days each month as the business of the commission may require, when authorized by the Governor.

(d) Quorum.—Any two commissioners shall constitute a quorum to transact business. No vacancy shall impair the right of the remaining commissioners to exercise all of the powers of the commission so long as a majority remain. The commission shall determine its own organization and methods of procedure.

Section 10. Administration.—(a) Duties and powers of commission. It shall be the duty of the commission to administer this act; and it shall have power and authority to adopt and enforce all reasonable rules and orders necessary or suitable to that end, and to employ any persons, make any expenditures, require any reports, and take any other action (within its means and consistent with the provisions of this act) necessary or suitable to that end. Annually, by the first day of February, the commission shall submit to the governor a summary report covering the administration and operation of this act during the preceding calendar year, and making such recommendations as the commission deems proper. Whenever the commission believes that a change in contribution and/or benefit rates will become necessary to protect the solvency of the fund, it shall at once inform the Governor and the legislature thereof,

and make recommendations accordingly. (Act No. 156, April 21, 1936.)

(b) General Commission Rules.—General rules, interpreting or applying this act and affecting all (or classes of) employers, employees, or other persons or agencies, shall be adopted by the commission only after discussion with a representative state-wide advisory council (constituted as hereinafter described) or after public hearing (before the commission) of which notice has been given through the press. Such general commission rules shall, upon adoption by a majority of the commission, be duly recorded in its minutes and be filed with the Secretary of State, and shall thereupon take legal effect. Such rules may be amended, in the same manner as is above provided for their adoption.

[fol. 42-14] (c) Publication.—The Commission shall cause to be printed in proper form for distribution to the public the text of this act, the commission's general rules, its annual report to the Governor, and any other material the commission deems relevant and suitable, and shall furnish the same to any person upon application therefor; and such printing and availability upon application shall be deemed a sufficient publication of the same.

(d) Personnel.—The commission subject to the written approval of the Governor is authorized, within its means to appoint and fix the compensation of such officers, accountants, attorneys, experts and other persons as are necessary in the execution of its functions. All positions in the administration of this act shall be filled by persons selected and appointed on a nonpartisan merit basis, under rules and regulations of the commission. The commission shall not employ or pay any person who is serving as an officer or committee member of any political party organization. The commission shall fix the duties and powers of all persons thus employed, and may authorize any such person to do any act or acts which could lawfully be done by a commissioner. The Commission may in its discretion bond any person handling moneys or signing checks hereunder.

(e) Advisory Councils.—The Governor shall appoint a State-wide advisory council of not less than nine members and may appoint local advisory councils, composed in each

case of equal numbers of employer representatives and employee representatives (namely of persons who may fairly be regarded as thus representative because of their vocation, employment or affiliations), and of members representing the public generally. Such councils shall aid the commission in formulating policies and discussing problems related to the administration of this act and in assuring impartiality, neutrality and freedom from political influence in the solution of such problems. Such advisory councils shall serve without compensation, but shall be reimbursed for any necessary traveling expenses, when approved by the Governor. Said State-wide advisory council shall assemble immediately upon their appointment by the Governor and institute a careful study and analysis of the National Security Act and of its relation to this act and to the other acts and laws of the State of Alabama designed to coordinate this State and its institutions with the plans and purposes of the Federal Government as expressed in its said Security Act. Said council shall at its earliest possible convenience prepare recommendations as to changes, amendments or modifications of such acts and laws of the State of Alabama, and particularly this act, [fol. 42-15] and said recommendations shall be submitted to the Governor and to the Legislature at its next session and at such succeeding sessions as said council may deem proper.

(f) Employment Stabilization.—It shall be one of the purposes of this act to promote the regularization of employment in enterprises, localities, industries and the state. The commission, with the advice and aid of its advisory councils, shall take all appropriate steps within its means to reduce and prevent unemployment; to encourage and assist in the adoption of pra-tical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise and assist in the establishment and operation, by municipalities, counties, school districts and the State, of reserves for public works to be used in times of business depression and unemployment; to promote the reemployment of unemployed workers throughout the State in every other way that may be feasible; and to these ends to employ experts and to carry on and publish the results of investigations and research studies.

(g) Records and Reports.—Every employer (of any person in this State) shall keep true and accurate employment record of all persons employed by him, and of the weekly hours worked for him by each, and of the weekly wages paid by him to each such person. Such records shall be open to inspection by the commission or its authorized representatives at any reasonable time and as often as may be necessary. The commission may require from any employer (of any person in this State) any reports covering persons employed by him, or employment, wages, hours, unemployment and related matters, which the commission deems necessary to the effective administration of this act. Information thus obtained shall not be published or be open to public inspection in any manner revealing the employer's identity, and any commission employee guilty of violating this provision shall be subject to the penalties provided in this act.

(h) Representation in Court.—On request of the commission the attorney general shall represent the commission and the State in any court action relating to this act or to its administration and enforcement, except as special counsel may be designated by the Commission with the approval of the Governor, and except as otherwise provided in this act.

(i) State Federal Cooperation.—The commission is hereby authorized and directed to cooperate in all necessary respects with the appropriate agencies and departments of the Federal Government, in the administration of this act and of free public employment offices; and to make all reports thereon requested by any directly interested Federal [fol. 42-16] agency or department, and to accept any sums allot-ed or apportioned to the State for such administration, and to comply with all reasonable Federal regulations governing the expenditures of such sums.

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That Section 11 be and the same is hereby repealed.

Section 12. Reciprocal Benefit Arrangements with Other States.—The Commission is hereby authorized, subject to approval by the governor, upon such terms as in its judgment will not result in any loss to the fund, to enter into reciprocal arrangements with the proper authorities, in the case of any other unemployment compensation system estab-

lished by any state law or by an Act of Congress, as to persons who have (after acquiring rights to benefits under this Act or under such other system) newly come under this Act or under such other system whereby such benefits (or substantially equivalent benefits) shall be paid (or both paid and financed) in whole or in part through (or by) the fund of the unemployment compensation system newly applicable to such person. Such reciprocal arrangements shall be adopted and published by the commission in the same manner as its general rules.

Section 13. Protection of Rights and Benefits.—(a) Waiver of Rights Void. No agreement by an employee to waive his right to benefit or any other right under this Act shall be valid. No agreement by an employee or by employees to pay all or any portion of the contributions required under this act from employers shall be valid. No employer shall make or require any deduction from wages to finance the contributions required of him, or require any waiver by an employee of any rights hereunder. Any employee claiming a violation of this section may have recourse to the method set up in this Act for deciding benefit claims; and the commission shall have power to take any steps necessary or suitable to correct and prosecute any such violation.

(b) Limitation of Fees. No employee shall be charged fees of any kind by the commission or its representatives, in any proceeding under this Act. Any employee claiming benefits in any proceeding or court action may be represented by counsel or other duly authorized agent; but no such counsel or agents shall together charge or receive for such services more than ten per centum of the maximum benefits at issue in such proceeding or court action.

(c) No Assignment or Garnishment of Benefits. Benefits which are due or may become due under this Act shall not be assignable before payment, but this provision shall not affect the survival thereof; and when awarded, adjudged, [fol. 42-17] or paid shall be exempt from all claims of creditors and from levy, execution and attachment or other remedy now or hereafter provided for recovery or collection of debt, which exemption may not be waived.

Section 14. Collection of Contributions.—(a) Interest on Tardy Payments. If any employer fails to make promptly,

by the date it becomes due hereunder, any payment required to be made by him under this act, he shall be additionally liable (to the unemployment administration fund) for interest on such payment at the rate of one percentum per month from the date such payment became due until paid, pursuant to general commission rules.

(b) Bankruptcy. In the event of an employers' dissolution, bankruptcy, adjudicated insolvency, receivership, assignment for benefits of creditors, judicially confirmed extension proposal or composition, or any analogous situation, contribution payments then or thereafter due under this act shall have the greatest priority (subsequent to taxes, but at least equal to wage claims) then permitted by law; but this sub-section shall not impair the lien of any judgment entered upon any award.

(c) Court Action.—Upon complaint of the commission, the attorney-general shall institute and prosecute the necessary actions or proceedings for the recovery of any contributions or other payments due hereunder; or, at his request and under his direction, the prosecuting attorney (of any county in which the employer has a place of business) shall institute and prosecute the necessary actions or proceedings for the recovery of any contributions or other payments due hereunder.

Section 15. Penalties.—(a) Whoever wilfully makes a false statement or representation to obtain or increase any benefit or other payment under this Act, either for himself, or for any other person, shall upon conviction be punished by a fine of not less than twenty nor more than fifty dollars, or by imprisonment in the county jail not longer than thirty days, or by both such fine and imprisonment; and each such false statement or representation shall constitute a separate and distinct offense.

(b) Any employer (of any person in this state) and any officer or agent of an employer, who wilfully makes a false statement or representation to avoid becoming or remaining subject hereto or to avoid or reduce any contribution or other payment required of such employer under this act or who wilfully fails or refuses to make any such contribution or other payment or to furnish any reports duly required hereunder or to appear or testify or produce records as

[fol. 42-18] lawfully required hereunder, or who makes or requires any deduction from wages to pay all or any portion of the contributions required from employers, or who tries to induce any employee to waive any right under this act, shall upon conviction be punished by a fine of not less than twenty nor more than two hundred dollars, or by imprisonment in the county jail not longer than sixty days, or by both such fine and imprisonment; and each such false statement or representation, and each day of such failure or refusal, and each such deduction from wages, and each such attempt to induce shall constitute a separate and distinct offense.

(c) Any violation, of any provision of this Act, for which a penalty is neither prescribed above nor provided by any other applicable statute, shall be punished by a fine of not less than twenty nor more than fifty dollars, or by imprisonment in the county jail not longer than thirty days, or by both such fine and imprisonment.

(d) On complaint of the commission the fines specified or provided in this section may be collected by the state in an action for debt. All fines thus collected shall be paid to the unemployment administration fund.

Act No. 156, April 21, 1936

Section 16. Unemployment Administration fund.—(a) Special Fund.—There is hereby created the "Unemployment Compensation Administration Fund," to consist of all moneys received by the State or by the commission for the administration of this Act or appropriated by the State for the purposes of this act and actually paid into such fund. This special fund shall be handled by the State treasurer as other State moneys are handled; but it shall be expended solely for the administration of this Act and other purposes herein specified, and its balances shall not lapse at any time but shall remain continuously available to the commission for expenditure consistent herewith.

(b) Federal Aids.—All Federal moneys allotted or apportioned to the State by the Federal Social Security Board (or other agency for the administration of this Act shall be paid into the unemployment administration fund. Subdivision C. Whenever requested by the Unemployment Compensation Commission to perform certain acts in connection

with the Unemployment Compensation Commission, the Alabama State Employment Service shall perform such acts as are requested and in the manner prescribed by the Unemployment Compensation Commission as expeditiously and economically as may be, and shall render to the Unemployment Compensation Commission a statement of the actual expenses incurred by the Alabama State Employment [fol. 42-19] Service, and the manner in which they were performed, whereupon the Unemployment Compensation Commission shall pay to the Alabama State Employment Service the amount of such expenses incurred.

Section 17. Appropriations.—All moneys in the unemployment administration fund at any time are hereby appropriated to the Unemployment Compensation Commission.

Act No. 156, April 21, 1936

It is expressly provided that in the event the Supreme Court of the United States shall hold Title Three or title nine of the Federal "Social Security Act" approved by the President August 14th, 1935, unconstitutional or inoperative for any reason whatsoever, then this Act shall become void, inoperative and of no effect and all payments of levies, contributions, taxes or pay-roll deductions made hereunder and then remaining unexpended shall be returned ratably to those making such payments and if such payments contain in whole or part deductions from the remuneration of employees, such employees shall in turn be repaid ratably such deductions as are returned on their account to their employers.

That if any section, clause or provision of this act should be held invalid, it shall not effect the remaining portions not so held invalid.

This act shall take effect immediately upon its passage and approval by the Governor.

Act No. 195, April 21, 1936

Section 18. Saving Clause.—The Legislature reserves the right to amend or repeal all or any part of this Act at any time; and there shall be no vested private right of any kind against such amendment or repeal. It is expressly provided that in the event the Supreme Court of the United States shall hold the Federal "Social Security Act" ap-

proved by the President August 14th, 1935, unconstitutional or inoperative for any reason whatsoever, then this Act shall become void, inoperative and of no effect and all payments of levies, contributions, taxes or payroll deductions made hereunder and then remaining unexpended shall be returned ratably to those making such payments and if such payments contain in whole or part deductions from the remuneration of employees, such employees shall in turn be repaid ratably such deductions as are returned on their account to their employers.

Section 19. Separability of Provisions.—If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the act and [fol. 42-20] the application of such provision to other persons or circumstances shall not be affected thereby.

Section 20. Effective Date.—This act shall take effect upon its enactment.

Approved September 14, 1935.

(Revised by Alabama Unemployment Compensation Commission to include amendments of April 21, 1936, and published for General Information.)

[fols. 43–43-1] EXHIBIT "E-4" TO COMPLAINT

Text of Those Provisions of the Federal Social Security Act (effective August 14, 1935) Relating to Unemployment Compensation under State Laws

This reprint aims to make readily available to interested Alabama citizens the full text of those federal provisions affecting state unemployment compensation laws.

Printed by the Alabama Unemployment Compensation Commission, which administers Alabama's law in this field, this pamphlet can be obtained from the Unemployment Compensation Commission, 623 Adams Avenue, Montgomery, Alabama.

The following "titles" of the federal Social Security Act are reprinted below:—Title III in full; Title IX, in full; Title XI, so far as applicable.

Title IX includes the following important provisions: (Sec. 901) a new federal excise tax to be paid by employers

of 8 or more persons based on their payrolls; (Sec. 902) credits or offsets against this tax, for an employer's contributions duly paid under any state unemployment compensation law which has been approved by the new federal Social Security Board; (Sec. 903) approval and certification by the Board of state laws meeting certain specified federal standards; (Sec. 904) federal custody and investment of monies contributed under approved state laws; (Sec. 907) definitions applicable under Title IX; (Sec. 909) the allowance of extra credits, against the federal payroll tax, to an employer whose state contribution rate has been reduced because of his steady employment and favorable compensation experience; (Sec. 910) the conditions under which such extra federal tax credits will be allowed.

[fol. 43-2] Title III—Grants to States for Unemployment Compensation Administration

Appropriation

Section 301. For the purpose of assisting the States in the administration of their unemployment compensation laws, there is hereby authorized to be appropriated, for the fiscal year ending June 30, 1936, the sum of $4,000,000, and for each fiscal year thereafter the sum of $49,000,000, to be used as hereinafter provided.

Payments To States

Section 302. (a) The Board shall from time to time certify to the Secretary of the Treasury for payment to each State which has an unemployment compensation law approved by the Board under Title IX, such amounts as the Board determines to be necessary for the proper administration of such law during the fiscal year in which such payment is to be made. The Board's determination shall be based on (1) the population of the State; (2) an estimate of the number of persons covered by the State law and of the cost of proper administration of such law; and (3) such other factors as the Board finds relevant. The Board shall not certify for payment under this section in any fiscal year a total amount in excess of the amount appropriated therefor for such fiscal year.

(b) Out of the sums appropriated therefor, the Secretary of the Treasury shall, upon receiving a certification under subsection (a), pay, through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, to the State agency charged with the administration of such law the amount so certified.

Provisions of State Laws

Section 303. (a) The Board shall make no certification for payment to any State unless it finds that the law of such State, approved by the Board under Title IX, includes provisions for—

(1) Such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be reasonably calculated to insure full payment of unemployment compensation when due; and

(2) Payment of unemployment compensation solely through public employment offices in the State, or such [fol. 43-3] other agencies as the Board may approve; and

(3) Opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied; and

(4) The payment of all money received in the unemployment fund of such State, immediately upon such receipt, to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904; and

(5) Expenditure of all money requisitioned by the State agency from the Unemployment Trust Fund, in the payment of unemployment compensation, exclusive of expenses of administration; and

(6) The making of such reports, in such form and containing such information, as the Board may from time to time require, and compliance with such provisions as the Board may from time to time find necessary to assure the correctness and verification of such reports; and

(7) Making available upon request to any agency of the United States charged with the administration of public works or assistance through public employment, the name,

address, ordinary occupation and employment status of each recipient of unemployment compensation, and a statement of such recipient's rights to further compensation under such law.

(b) Whenever the Board, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that in the administration of the law there is—

(1) a denial, in a substantial number of cases, of unemployment compensation to individuals entitled thereto under such law; or

(2) a failure to comply substantially with any provision specified in subsection (a);

the Board shall notify such State agency that further payments will not be made to the State until the Board is satisfied that there is no longer any such denial or failure to comply. Until it is satisfied it shall make no further certification to the Secretary of the Treasury with respect to such State.

[fol. 43-4] Title IX–Tax on Employers of Eight or More

Imposition of Tax

Section 901. On and after January 1, 1936, every employer (as defined in section 907) shall pay for each calendar year an excise tax, with respect to having individuals in his employ, equal to the following percentages of the total wages (as defined in section 907) payable by him (regardless of the time of payment) with respect to employment (as defined in section 907) during such calendar year:

(1) With respect to employment during the calendar year 1936 the rate shall be 1 per centum;

(2) With respect to employment during the calendar year 1937 the rate shall be 2 per centum;

(3) With respect to employment after December 31, 1937, the rate shall be 3 per centum.

Credit Against Tax

Section 902. The taxpayer may credit against the tax imposed by section 901 the amount of contributions, with re-

spect to employment during the taxable year, paid by him (before the date of filing his return for the taxable year) into an unemployment fund under a State law. The total credit allowed to a taxpayer under this section for all contributions paid into unemployment funds with respect to employment during such taxable year shall not exceed 90 per centum of the tax against which it is credited, and credit shall be allowed only for contributions made under the laws of States certified for the taxable year as provided in section 903.

Certification of State Laws

Section 903. (a) The Social Security Board shall approve any State law submitted to it, within thirty days of such submission, which it finds provides that—

(1) All compensation is to be paid through public employment officers in the State, or such other agencies as the Board may approve;

(2) No compensation shall be payable with respect to any day of unemployment occurring within two years after the first day of the first period with respect to which contributions are required;

(3) All money received in the unemployment fund shall immediately upon such receipt be paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904;

[fol. 43-5] (4) All money withdrawn from the Unemployment Trust Fund by the State agency shall be used solely in the payment of compensation, exclusive of expenses of administration;

(5) Compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (A) if the position offered is vacant due directly to a strike, lockout, or other labor dispute; (B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

(6) All the rights, privileges, or immunities conferred by such law or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal such law at any time.

The Board shall, upon approving such law, notify the Governor of the State of its approval.

(b) On December 31 in each taxable year the Board shall certify to the Secretary of the Treasury each State whose law it has previously approved, except that it shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Board finds has changed its law so that it no longer contains the provisions specified in subsection (a) or has with respect to such taxable year failed to comply substantially with any such provision.

(c) If, at any time during the taxable year, the Board has reason to believe that a State whose law it has previously approved, may not be certified under subsection (b), it shall promptly so notify the Governor of such State.

Unemployment Trust Fund

Section 904. (a) There is hereby established in the Treasury of the United States a trust fund to be known as the "Unemployment Trust Fund", hereinafter in this title called the "Fund". The Secretary of the Treasury is authorized and directed to receive and hold in the Fund all moneys deposited therein by a State agency from a State unemployment fund. Such deposit may be made directly with the Secretary of the Treasury or with any Federal reserve bank or member bank of the Federal Reserve System designated by him for such purpose.

[fol. 43-6] (b) It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investment may be made only in interest bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at par, or (2) by purchase of outstanding obligations at the market price. The purposes for which obliga-

tions of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par special obligations exclusively to the Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such issue, borne by all interest-bearing obligations of the United States then forming part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 per centum next lower than such average rate. Obligations other than such special obligations may be acquired for the Fund only on such terms as to provide an investment yield not less than the yield which would be required in the case of special obligations if issued to the Fund upon the date of such acquisition.

(c) Any obligations acquired by the Fund (except special obligations issued exclusively to the Fund) may be sold at the market price, and such special obligations may be redeemed at par plus accrued interest.

(d) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(e) The Fund shall be invested as a single fund, but the Secretary of the Treasury shall maintain a separate book account for each State agency and shall credit quarterly on March 31, June 30, September 30, and December 31, of each year, to each account, on the basis of the average daily balance of such account, a proportionate part of the earnings of the Fund for the quarter ending on such date.

(f) The Secretary of the Treasury is authorized and directed to pay out of the Fund to any State agency such amount as it may duly requisition, not exceeding the amount standing to the account of such State agency at the time of such payment.

Administration, Refunds and Penalties

Section 905. (a) The tax imposed by this title shall be collected by the Bureau of Internal Revenue under the di- [fol. 43-7] rection of the Secretary of the Treasury and shall

be paid into the Treasury of the United States as internal-revenue collections. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of one-half of 1 per centum per month from the date the tax became due until paid.

(b) Not later than January 31, next following the close of the taxable year, each employer shall make a return of the tax under this title for such taxable year. Each such return shall be made under oath, shall be filed with the collector of internal revenue for the district in which is located the principal place of business of the employer, or, if he has no principal place of business in the United States, then with the collector at Baltimore, Maryland, and shall contain such information and be made in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulations prescribe. All provisions of law (including penalties) applicable in respect of the taxes imposed by section 600 of the Revenue Act of 1926, shall, insofar as not inconsistent with this title, be applicable in respect of the tax imposed by this title. The Commissioner may extend the time for filing the return of the tax imposed by this title, under such rules and regulations as he may prescribe with the approval of the Secretary of the Treasury, but no such extension shall be for more than sixty days.

(c) Returns filed under this title shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns made under Title II of the Revenue Act of 1926.

(d) The taxpayer may elect to pay the tax in four equal installments instead of in a single payment, in which case the first installment shall be paid not later than the last day prescribed for the filing of returns, the second installment shall be paid on or before the last day of the third month, the third installment on or before the last day of the sixth month, and the fourth installment on or before the last day of the ninth month, after such last day. If the tax or any installment thereof is not paid or on before the last day of the period fixed for its payment, the whole amount of the tax unpaid shall be paid upon notice and demand from the collector.

(e) At the request of the taxpayer the time for payment

of the tax or any installment thereof may be extended under regulations prescribed by the Commissioner with the approval of the Secretary of the Treasury, for a period not to exceed six months from the last day of the period prescribed for the payment of the tax or any installment thereof. The amount of the tax in respect of which any [fol. 43-8] extension is granted shall be paid (with interest at the rate of one-half of 1 per centum per month) on or before the date of the expiration of the period of the extension.

(f) In the payment of any tax under this title a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

Interstate Commerce

Section 906. No person required under a State law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he is engaged in interstate commerce, or that the State law does not distinguish between employees engaged in interstate commerce and those engaged in intrastate commerce.

Definitions

Section 907. When used in this title—

(a) The term "employer" does not include any person unless on each of some twenty days during the taxable year, each day being in a different calendar week, the total number of individuals who were in his employ for some portion of the day (whether or not at the same moment of time) was eight or more.

(b) The term "wages" means all remuneration for employment including the cash value of all remuneration paid in any medium other than cash.

(c) The term "employment" means any service, of whatever nature, performed within the United States by an employee for his employer, except—

(1) Agricultural labor;

(2) Domestic service in a private home;

(3) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(5) Service performed in the employ of the United States Government or of an instrumentality of the United States;

(6) Service performed in the employ of a State, a political subdivision thereof, or an instrumentality of one or more States or political subdivisions;

(7) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, liter- [fol. 43-9] ary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(d) The term "State agency" means any State officer, board, or other authority, designated under a State law to administer the unemployment fund in such State.

(e) The term "unemployment fund" means a special fund, established under a State law and administered by a State agency for the payment of compensation.

(f) The term "contributions" means payments required by a State law to be made by an employer into an unemployment fund, to the extent that such payments are made by him without any part thereof being deducted or deductible from the wages of individuals in his employ.

(g) The term "compensation" means cash benefits payable to individuals with respect to their unemployment.

Rules and Regulations

Section 908. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make and publish rules and regulations for the enforcement of this title, except sections 903, 904, and 910.

Allowance of Additional Credit

Section 909. (a) In addition to the credit allowed under section 902, a taxpayer may, subject to the conditions im-

posed by section 910, credit against the tax imposed by section 901 for any taxable year after the taxable year 1937, an amount, with respect to each State law, equal to the amount, if any, by which the contributions, with respect to employment in such taxable year, actually paid by the taxpayer under such law before the date of filing his return for such taxable year, is exceeded by whichever of the following is the lesser—

(1) The amount of contributions which he would have been required to pay under such law for such taxable year if he had been subject to the highest rate applicable from time to time throughout such year to any employer under such law; or

(2) Two and seven-tenths per centum of the wages payable by him with respect to employment with respect to which contributions for such year were required under such law.

[fol. 43-10] (b) If the amount of the contributions actually so paid by the taxpayer is less than the amount which he should have paid under the State law, the additional credit under subsection (a) shall be reduced proportionately.

(c) The total credits allowed to a taxpayer under this title shall not exceed 90 per centum of the tax against which such credits are taken.

Conditions of Additional Credit Allowance

Section 910. (a) A taxpayer shall be allowed the additional credit under section 909, with respect to his contribution rate under a State law being lower, for any taxable year, than that of another employer subject to such law, only if the Board finds that under such law—

(1) Such lower rate, with respect to contributions to a pooled fund, is permitted on the basis of not less than three years of compensation experience;

(2) Such lower rate with respect to contributions to a guaranteed employment account, is permitted only when his guaranty of employment was fulfilled in the preceding calendar year, and such guaranteed employment account amounts to not less than 7½ per centum of the total wages payable

by him, in accordance with such guaranty, with respect to employment in such State in the preceding calendar year;

(3) Such lower rate, with respect to contributions to a separate reserve account, is permitted only when (A) compensation has been payable from such account throughout the preceding calendar year, and (B) such account amounts to not less than five time- the largest amount of compensation paid from such account within any one of the three preceding calendar years, and (C) such account amounts to not less than 7½ per centum of the total wages payable by him (plus the total wages payable by any other employers who may be contributing to such account) with respect to employment in such State in the preceding calendar year.

(b) Such additional credit shall be reduced, if any contributions under such law are made by such taxpayer at a lower rate under conditions not fulfilling the requirements of subsection (a), by the amount bearing the same ratio to such additional credit as the amount of contributions made at such lower rate bears to the total of his contributions paid for such year under such law.

[fol. 43-11] (c) As used in this section—

(1) The term "reserve account" means a separate account in an unemployment fund, with respect to an employer or group of employers, from which compensation is payable only with respect to the unemployment of individuals who were in the employ of such employer, or of one of the employers comprising the group.

(2) The term "pooled fund" means an unemployment fund or any part thereof, in which all contributions are mingled and undivided, and from which compensation is payable to all eligible individuals, except that to individuals last employed by employers with respect to whom reserve accounts are maintained by the State agency, it is payable only when such accounts are exhausted.

(3) The term "guaranteed employment accounts" means a separate account, in an unemployment fund, of contributions paid by an employer (or group of employers) who

(A) guarantees in advance thirty hours of wages for each of forty calendar weeks (or more, with one weekly hour deducted for each added week guaranteed) in twelve

months, to all the individuals in his employ in one or more distinct establishments, except that any such indivdual's guaranty may commence after a probationary period (included within twelve or less consecutive calendar weeks), and

(B) gives security or assurance, satisfactory to the State agency, for the fulfillment of such guaranties,

from which account compensation shall be payable with respect to the unemployment of any such individual whose guaranty is not fulfilled or renewed and who is otherwise eligible for compensation under the State law.

(4) The term "year of compensation experience", as applied to an employer, means any calendar year throughout which compensation was payable with respect to any individual in his employ who became unemployed and was eligible for compensation.

[fol. 43-12] Title XI—General Provisions

Section 1101. (a) When used in this Act—

(1) The term "State" (except when used in section 531) includes Alaska, Hawaii, and the District of Columbia.

(2) The term "United States" when used in a geographical sense means the States, Alaska, Hawaii, and the District of Columbia.

(3) The term "person" means an individual, a trust or estate, a partnership, or a corporation.

(4) The term "corporation" includes associations, joint-stock companies, and insurance companies.

(5) The term "shareholder" includes a member in an association, joint-stock company, or insurance company.

(6) The term "employee" includes an officer of a corporation.

(b) The terms "includes" and "including" when used in a definition contained in this Act shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(c) • • •

(d) • • •

Rules and Regulations

Section 1102. The Secretary of the Treasury, the Secretary of Labor, and the Social Security Board, respectively, shall make and publish such rules and regulations, not inconsistent with this Act, as may be necessary to the efficient administration of the functions with which each is charged under this Act.

Separability

Section 1103. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances shall not be affected thereby.

Reservation of Power

Section 1104. The right to alter, amend, or repeal any provision of this Act is hereby reserved to the Congress.

Short Title

Section 1105. This Act may be cited as the "Social Security Act."

[fols. 44-44-1] EXHIBIT "E-5" TO COMPLAINT

Contribution Instructions Relating to the Unemployment Compensation Law of the State of Alabama

[fol. 44-2] Contribution Instructions

To employers subject to the contribution provisions of the Alabama Unemployment Compensation Law:

(Keep these Instructions for future reference. They will not be sent to you each month, so please save this copy.)

The Alabama Unemployment Compensation Law requires (Sections 4 (a) and 4 (d)) that each employer subject to the law shall pay contributions to the Alabama Unemployment Compensation Fund at the rate of 9/10 of 1 per cent beginning January 1, 1936, and each covered employee at the rate of 1 per cent beginning May 1, 1936, on all "wages payable for employment". The employer is responsible for

withholding from wages of his employees the contribution required of them under the Act, and for transmitting such employee contributions to the Commission. The employer can withhold only one per cent from employee's wages. It is unlawful for him to withhold from wages of employees any portion of his own contributions.

Inasmuch as the Alabama law has been approved by the Federal Social Security Board, each employer may secure the maximum credit allowable for his contributions to the Alabama Unemployment Compensation Fund against the federal excise tax on total wages in employment of employees of employers of eight or more (1 per cent of 1936 payrolls with maximum credit allowed for contributions to a state fund of 90 per cent of the tax).

The Alabama Unemployment Compensation Commission will collect contributions monthly. Since contributions have been accruing for eight months, the Commission provides for (a) an initial payment covering four months, January 1 to April 30, 1936; (b) a second payment covering May 1 to August 31, 1936, and (c) regular monthly collections [fol. 44-3] thereafter. The contributions for the periods ending April 30, 1936, and August 31, 1936, shall be due not later than September 21, 1936.

See Article V, Rules and Regulations, for the classifications of employment that are exempt from contributions.

Persons employed partly in Alabama and partly outside are to be included if the greater part of their services are customarily performed in Alabama (See Sections 800 and 801, Rules and Regulations). Persons customarily employed by the employer for the greater part of their time in other states are not to be considered for the present. Supplemental Instructions will be issued, covering such classes of employees after the Commission has acted under authority to enter into reciprocal agreements with other states given in Section 2 (g) of the Act.

Reports to be Made by Employers

The law provides (Section 10 (g)) that "the Commission may require from any employer any reports covering persons employed by him, on employment, wages, hours, unemployment and related matters, which the Commission deems necessary to the effective administration of the Act". Dur-

ing the first year of the operation of the Act, only one type of report is required from employers.

Attention is called to Form C. R. No. 3, enclosed, and the instructions on the back of the Form. This is a monthly summary report showing the number of employees, hours worked and amount of wages paid on which the employer's contribution is based. This form will be used after August 31, 1936.

These report forms will be sent by the Commission each month to employers who are subject to contributions. However, when an employer is in fact subject to the contribution provisions of the law by reasons of employment performed for him, failure to receive this reporting form does not affect his status or postpone his liability to make required contributions.

[fol. 44-4] Special Forms, C. R. No. 1 and C. R. No. 2, are enclosed on which to report contributions for the periods January 1 through April 30, 1936, and May 1 through August 31, 1936, respectively.

Where employees are paid on a "weekly" basis, the report for a respective calendar month should contain information for the weeks ending in that month. A part week at the end of a month should be included in the report for the next month.

On the initial reports for the periods January 1 through April 30, 1936 and May 1 through August 31, 1936, the weeks need not be split between the months, January-February, February-March, March-April, May-June, June-July, July-August. However, care should be exercised in the case of "employer" contribution to split the week in which January 1 occurred and include in that report only the portion of the week falling in 1936, and in the case of both four month reports to split the week in which May 1 occurred.

The same condition which requires splitting the week will occur when reporting the last week in December, as each year must be complete in itself due to the change in rate of contribution. (Section 722 Rules & Regulations).

Beginning January 1, 1937, complete reports must be made of each employee's weekly hours and wages for purposes of determining full time weekly wages and the amount of benefits in accordance with Section 5 (a) of the law. Instructions for these reports will be sent later.

Records to be Kept by Employer

The Alabama Law provides (Section 10 (g)) that each employer shall keep "true and accurate employment records containing such information as the Commission may prescribe. Such records shall be open to inspection and be subject to being copied by the Commission or its authorized representatives at any reasonable time and as often as may be necessary."

The records necessary for the employer to prepare the summary contribution report—and for payroll audits by the [fol. 44-5] authorized representatives of the Alabama Unemployment Compensation Commission—shall contain the following items for each person on the payroll:

1. Employee's name (and identifying number if any).

2. Number of hours worked each week during the payroll period (unless the employee is on a fixed stipend and receives full pay regardless of the number of hours worked; in such cases the scheduled hours should be specified).

3. Money wages paid by the employer during the payroll period.

4. Other compensation during the payroll period, itemized. (See Sections 600-613, Rules and Regulations, and instructions on reverse side of C. R. No. 3).

5. Deferred payments, such as bonuses, if any, and the period covered.

Provision should be made for recording the total number of employees on the payroll, the weekly hours scheduled, the duration of the payroll periods, and the dates covered, and for totaling the items covering hours, money wages, other compensation, and deferred payments.

The Alabama Unemployment Compensation Commission is not concerned with the forms on which employers keep such records. The payroll form in use will be satisfactory if it contains all the items specified. Employers who wish suggestions concerning a payroll form may write to the Commission.

Interest on Past Due Contributions and Penalties

Attention is called to Section 14 of the Act and Section 714 of the Rules and Regulations concerning interest on

past due contributions and to Section 15 of the Act and Section 204 of the Rules and Regulations, concerning penal-[fol. 44-6] ties for false statements and misrepresentations or failure to disclose a material fact to avoid or reduce any contributions required under this Act.

Credit for Contributions made to State Unemployment Compensation Fund

Regulations No. 90 of the United States Treasury Department, Bureau of Internal Revenue, Relating to the Exeise Tax on Employers under Title IX of the Social Security Act, provides for credit up to 9/10 of the 1 per cent payroll excise tax, which the employer is required to pay to the Federal Government, if such 9/10 of 1 per cent is paid into a state unemployment compensation fund. However, in order to secure such credit, the Treasury Department must be furnished with a certificate from the Unemployment Compensation Commission, showing the amount of contribution the employer has made to the fund. Employers are, therefore, urged to forward their contribution promptly at the time due so that the necessary certificates may be properly prepared.

All questions concerning contributions or the operation of the Alabama Unemployment Compensation Act should be addressed to:

Alabama Unemployment Compensation Commission. J. L. Kaufman, Chairman, 623 Adams Avenue, Montgomery, Alabama.

September 1, 1936.

EXHIBIT – "E – 6" to COMPLAINT

S. R. 1

EMPLOYER'S STATUS REPORT

TO THE

UNEMPLOYMENT COMPENSATION COMMISSION

UNDER THE

ALABAMA UNEMPLOYMENT COMPENSATION LAW

A. GENERAL INFORMATION

This form is returnable in ten days of receipt to the Unemployment Compensation Commission of Alabama, Montgomery, Alabama.

Firm Name of Employer _____

Business Address _____

Places of Business in Alabama

(Attach list if more space is required.)

Nature of Business _____ (If non-profit and devoted exclusively to charitable, educational, etc. purposes, see Rule No. 6, "Information & Instructions," as to reporting requirements.)

Type of Organization _____ (Individual, partnership, corporation, etc.)

Date of Organization _____ (If corporation, give date and State of incorporation)

If Foreign Corporation, give date of registration in Office of Alabama Secretary of State _____

Predecessor, if any, from whom business was acquired _____

Date of acquisition _____

Is employer affiliated directly or indirectly with any other Alabama employer, either as parent company or subsidiary, or through majority ownership or control by a common parent or holding company, or otherwise _____

If so, set out in detail such affiliation _____

Total Alabama Payroll for 1935 - $ _____

If reporting employer acknowledges by signing the following certificate, that he is subject to the contribution provisions of the Unemployment Compensation Law, HE NEED NOT FILL IN THE REVERSE SIDE OF THIS FORM.

I certify that the nature and extent of employment in my business during 1935 was such as to make me liable, under the provisions of the Alabama Unemployment Compensation Law, for contributions to the Unemployment Compensation Fund established by that law.

Name of Employer _____

By _____

DESCRIBE FULLY THE EXACT NATURE OF YOUR BUS... Official Position _____

B. WEEKLY REPORT

Weekly Record of all persons who performed any service in the business of the Reporting Employer in the Year 1935

No. of Weeks in Year	A	B	C	D	E	F	G	H
	Total Number of Persons	Number claimed as exempt under provisions of Act set forth in "Information & Instructions" under Rules 1 to 8					Net Total in Employment	(Do not fill in)
		Rule 7	Rule 8	Rule 1	Rule 4	All Others		
1 wk.								
2 "								
3 "								
4 "								
5 "								
6 "								
7 "								
8 "								
9 "								
10 "								
11 "								
12 "								
13 "								
14 "								
15 "								
16 "								
17 "								
18 "								
19 "								
20 "								
21 "								
22 "								
23 "								
24 "								
25 "								
26 "								
27 "								
28 "								
29 "								
30 "								
31 "								
32 "								
33 "								
34 "								
35 "								
36 "								
37 "								
38 "								
39 "								
40 "								
41 "								
42 "								
43 "								
44 "								
45 "								
46 "								
47 "								
48 "								
49 "								
50 "								
51 "								
52 "								

Number of weeks of eight or more in employment _____

I certify that the foregoing information is true and correct to the best of my knowledge and belief.

Name of Employer _____

By _____

Date of Submission _____

Official Position _____

_____ 1936

45½

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Form C.R. No. 2
Alabama U.C.C.

EXHIBIT - E-7" to COMPLAINT

EMPLOYER'S CONTRIBUTION REPORT COVERING EMPLOYER AND EMPLOYEE CONTRIBUTIONS

For the Period ~~January 1~~ May 1 through ~~March 31~~ August 31 1936, Due not later than September 28, 1936.

Location of establishment
covered by this report
(if address is different from that shown above in right hand corner.)

(1) Duration of pay period		(2) Date of end of period	(3) Number of covered employees	(4) Total hours worked by covered employees	(5) Money wages	(6) Money value of Other remuneration	(7) Total earnings Cols. 5 and 6
Week	1						
	2						
	3						
	4						
	5						
	6						
	7						
	8						
	9						
	10						
	11						
	12						
	13						
	14						
	15						
	16						
	17						
	18						
			Total				
Half Month	1						
	2						
	3						
	4						
	5						
	6						
	7						
	8						
			Total				
Month	1						
	2						
	3						
	4						
			Total				
Deferred payments if any							
			Grand Total				

Employer's Contribution (9/10 of 1 per cent of grand total Column 7) - - - - - - - - - - - - - - - - $
Employee's Contribution (total of employees' contributions, each employee's contribution being 1 per cent of his wages) - - - - - - - - - - - - - - - -
Total Contributions - - - - - - - - - - - - - - - -

Reverse side
Form C.R. No. 2
Alabama U.C.C.

INSTRUCTIONS FOR MAKING CONTRIBUTION REPORT

Pay Roll Period

If you have weekly pay rolls (for all or some of your employees) use lines 1 to 18 for the 18 weeks from May 1 through August 29, 1936. (The week of April 26 to May 2 should be split to begin from May 1. The week of August 30 to September 5 should be included on the September report.) (The weeks need not be split between the months May-June, June-July, and July-August.)

If you have bi-weekly pay rolls, use as many lines as may be needed from 1 to 18, under "Week".

If you have semi-monthly pay rolls (for all or some of your employees) enter the total of each pay roll on Lines 1 to 8 for the 8 half months May through August, under "Half Month".

If you have a monthly pay roll (for some or all of your employees), enter the total for each pay roll for the 4 months, May through August, on the 4 lines under "Month".

Deferred Payments

On this line should be entered all deferred payments—that is, all payments such as annual bonuses for services performed during the months for which this report is being made. After January 1, 1937 a supplementary report must be made for all such deferred payments, indicating the recipients and the period for which each payment is made. In all cases where the accrued value or the amount payable of a deferred payment is known, such amount should be included with money wages and reported for the month in which earned.

Employers having several pay rolls on the same bases within the same period must make separate report of each pay roll within the period on the same basis.

Total all pay rolls opposite "Grand Total".

Date of End of Pay Period

In Column 2 the date desired is the date of the end of the pay period, not the date that wages are paid.

Covered Employees

In Column 3, enter the total number of covered employees on the pay roll for the pay roll period and in employment as defined by Section 2 (g) of the Act. (See also Article V, Rules and Regulations, for excluded employment.)

Hours Worked

In Column 4, enter actual hours worked by all covered employees whose remuneration varies with the number of hours they work; for employees on a fixed stipend, scheduled weekly hours should be substituted.

Employers who have not kept on their pay rolls a record of the hours worked by each employee may omit this column in making their first report. Such information must be supplied for all subsequent months.

Total Earnings

Column 5 must contain the total cash wages paid for each pay roll period.

Column 6 must show the total money value of all remuneration other than cash for each pay roll period (See Article VI, Sections 600-619, Rules and Regulations).

Column 7 must contain the total earnings of all covered employees for each pay roll period and should equal the total of Columns 5 and 6.

GENERAL INSTRUCTIONS

Fill out the report on typewriter or in ink. If you have separate pay rolls for separate establishments, enter the summary for each establishment on a separate sheet and attach to this form. The Commission will furnish extra copies on request.

Do not send cash. Remittance should be in the form of check or money order, payable to Alabama Unemployment Compensation Commission. Cash payments may be made to the Cashier of the Commission at 623 Adams Avenue, Montgomery, Alabama. (See Sections 717-719, Rules and Regulations.)

Additions for previous over-payments and deductions for previous under-payments can be made only upon specific authorization from the Commission and copies of such authorization should be attached to the report on which such corrections are shown. (See Section 716, Rules and Regulations.)

Send the original of the report to Alabama Unemployment Compensation Commission, Montgomery, Alabama, preserving monthly copy to facilitate verification by authorized representatives of the Commission. If one sheet is not sufficient to include all pay rolls of employers during reporting period, additional sheets of this form should be used, numbered 1, 2, 3, etc., in which event the monthly totals should be summarized and inserted only on Grand Total line of the last sheet of the group.

Additional forms may be secured on application to the Commission.

EXHIBIT - "E - 8" to COMPLAINT

Form C.R. No. 1
Alabama U.C.C.

EMPLOYER'S CONTRIBUTION REPORT COVERING EMPLOYER'S CONTRIBUTION

For the Period January 1, through April 30, 1936, Due not later than September 28, 1936.

Location of establishment
covered by this report _____
(if address is different from that shown above in right hand corner.)

(1) Duration of pay period		(2) Date of end of period	(3) Number of covered employees	(4) Total hours worked by covered employees	(5) Money wages	(6) Money value of Other remuneration	(7) Total earnings Cols. 5 and 6
Week,	1						
	2						
	3						
	4						
	5						
	6						
	7						
	8						
	9						
	10						
	11						
	12						
	13						
	14						
	15						
	16						
	17						
	18						
			Total				
Half Month	1						
	2						
	3						
	4						
	5						
	6						
	7						
	8						
			Total				
Month	1						
	2						
	3						
	4						
			Total				
Deferred payments if any							
			Grand Total				

Employer's Contribution (9/10 of 1 per cent of grand total Column 7) - - - - - - - - - $ _____

1 per cent per month interest if delinquent from due date as set out above - - - - - - - - _____

Total remittance enclosed - _____

(Make check payable to Alabama Unemployment Compensation Commission and send to 623 Adams Avenue, Montgomery, Ala.)

I certify that the information contained in this report, required in accordance with Section 10 (g) of the Alabama Unemployment Compensation Act, is true and correct in accordance with said Act. No part of the contribution reported as payable on behalf of the employer was deducted or is to be deducted from employees' wages.

Name of Employer _____

By _____

Date signed _____ Official Title _____

On the first line of the signature, show the firm name as given in the address space at the top of the report (unless same has been changed, in which case show new or correct name). If the firm is a corporation, the second line must be signed by a qualified official; or if a partnership, by a partner. If signed by a corporation official, show title.

(See reverse side for Instructions)

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Reverse side
Form C.R. No. 1
Alabama U.C.C.

INSTRUCTIONS FOR MAKING CONTRIBUTION REPORT

Pay Roll Period

If you have weekly payrolls (for all or some of your employees) use Lines 1 to 18 for the 18 weeks from January 1 through April 30, 1936. (The week of December 29, 1935, to January 4, 1936, should be split to begin from January 1. The week of April 26 to May 2 should be split to close with April 30.) (The weeks need not be split between the months January-February, February-March, and March-April.)

If you have bi-weekly pay rolls, use as many lines as may be needed from 1 to 18, under "Week".

If you have semi-monthly pay rolls (for all or some of your employees) enter the total of each pay roll on Lines 1 to 8 for the 8 half months January through April, under "Half Month".

If you have a monthly pay roll (for some or all of your employees), enter the total for each pay roll for the 4 months, January through April, on the 4 lines under "Month".

Deferred Payments

On this line should be entered all deferred payments—that is, all payments such as anndal bonuses for services performed during the months for which this report is being made. After January 1, 1937 a supplementary report must be made for all such deferred payments, indicating the recipients and the period for which each payment is made. In all cases where the accrued value or the amount payable of a deferred payment is known, such amount should be included with money wages and reported for the month in which earned.

Employers having several pay rolls on the same bases within the same period must make separate report of each pay roll within the period on the same basis.

Total all pay rolls opposite "Grand Total".

Date of End of Pay Period

In Column 2 the date desired is the date of the end of the pay period, not the date that wages are paid.

Covered Employees

In Column 3, enter the total number of covered employees on the pay roll for the pay roll period and in employment as defined by Section 2 (g) of the Act. (See also Article V, Rules and Regulations, for excluded employment.)

Hours Worked

In Column 4, enter actual hours worked by all covered employees whose remuneration varies with the number of hours they work; for employees on a fixed stipend, scheduled weekly hours should be substituted.

Employers who have not kept on their pay rolls a record of the hours worked by each employee may omit this column in making their first report. Such information must be supplied for all subsequent months.

Total Earnings

Column 5 must contain the total cash wages paid for each pay roll period.

Column 6 must show the total money value of all remuneration other than cash for each pay roll period (See Article VI, Sections 600-619, Rules and Regulations).

Column 7 must contain the total earnings of all covered employees for each pay roll period and should equal the total of Columns 5 and 6.

GENERAL INSTRUCTIONS

Fill out the report on typewriter or in ink. If you have separate pay rolls for separate establishments, enter the summary for each establishment on a separate sheet and attach to this form. The Commission will furnish extra copies on request.

Do not send cash. Remittance should be in the form of check or money order, payable to Alabama Unemployment Compensation Commission. Cash payments may be made to the Cashier of the Commission at 623 Adams Avenue, Montgomery, Alabama. (See Sections 717-719, Rules and Regulations.)

Send the original of the report to Alabama Unemployment Compensation Commission, Montgomery, Alabama, preserving monthly copy to facilitate verification by authorized representatives of the Commission. If one sheet is not sufficient to include all pay rolls of employers during reporting period, additional sheets of this form should be used, numbered 1, 2, 3, etc., in which event the monthly totals should be summarized and inserted only on Grand Total line of the last sheet of the group.

Additional forms may be secured on application to the Commission.

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EXHIBIT "E - 9" to COMPLAINT

Form C.R. No. 3
Alabama U.C.C.

EMPLOYER'S CONTRIBUTION REPORT COVERING EMPLOYER AND EMPLOYEE CONTRIBUTIONS

For Month of _____ Due _____

Location of establishment covered by this report _____
(if address is different from that shown in right hand corner)

(1) Duration of pay period		(2) Date of end of pay period	(3) Number of covered employees	(4) Total hours worked by covered employees	(5) Money wages	(6) Money Value of Other remuneration	(7) Total Earnings Cols. 5 and 6
Week	A						
	B						
	C						
	D						
	E						
	F		Total				
Half Month	G						
	H						
	I		Total				
Month	J						
Deferred payments if any	K						
			Grand Total				

M. Employer Contribution (9/10 of 1 per cent of L-7) - - - - - - - - - - - - $ _____

N. Employee Contribution (total of employees' contributions, each employee's contribution being 1 per cent of his wages) - - - - - - - - - - - - - - - _____

O. Total Contributions (total of lines M and N) - - - - - - - - - - - - - - _____

P. 1 per cent per month interest if delinquent from due date as set out above - - - - - - - - _____

Q. Corrections (if any) for previous over-payment - - - - - - - - - - - - _____

R. Corrections (if any) for previous under-payment - - - - - - - - - - - - _____

S. Total remittance enclosed - - - - - - - - - - - - - - - - - - _____

(Make check payable to Alabama Unemployment Compensation Commission and send to 623 Adams Avenue, Montgomery, Alabama.)

Please explain here the reason for any marked change in employment, man-hours, or pay rolls since your last report:

_____

_____

I certify that the information contained in this report, required in accordance with Section 10 (g) of the Alabama Unemployment Compensation Act, is true and correct in accordance with said Act. No part of the contribution reported as payable on behalf of the employer was deducted or is to be deducted from employees' wages.

Name of Employer _____

By _____

Official Title _____

Date signed _____

On the first line of the Signature, show the firm name as given in the address space at the top of the report (unless same has been changed, in which case show new or correct name). If the firm is a corporation, the second line must be signed by a qualified official; or if a partnership, by a partner. If signed by a corporation official, show title.

See reverse side for Instructions.

Reverse side
Form C.R. No. 3
Alabama U.C.C.

INSTRUCTIONS FOR MAKING CONTRIBUTION REPORTS

Pay Roll Periods
Lines A to L.

If you have weekly pay rolls (for all or some of your employees), enter the totals for each weekly pay roll period ending within the month (there will be four or five) on lines A to E, and total them on Line F. Except for the first and last weeks of each year, reports should be made only for complete weeks; a part week at the end of a month should be included in the report for the next month. However, at the end of the year (December), report any fraction of a week necessary to account for all wages payable in the year. The remaining fraction of the week that is in the following January is to be included in that report for January.

If you have bi-weekly pay rolls, report them on lines A to E as indicated above.

If you have semi-monthly pay rolls (for all or some of your employees), enter the total for each pay roll on lines G and H, totaling them on line I.

If you have a monthly pay roll (for some or all of your employees) enter the totals on line J.

On line K should be entered all deferred payments—that is, all payments such as annual bonuses for services performed in periods prior to the month for which this report is being made. After January 1, 1937 a supplementary report must be made for all such deferred payments, indicating the recipients and the period for which each payment is made. In all cases where the accrued value or the amount payable of a deferred payment is known, such amount should be included with money wages and reported for the month in which earned.

Total all pay rolls on line L.

Date of End of Pay Period

In Column 2 the date desired is the date of the end of the pay period, not the date that wages are paid.

Covered Employees

In Column 3, enter the total number of covered employees on the pay roll for the pay roll period and in employment as defined by Section 2 (g) of the Act. (See also Article V, Rules and Regulations, for excluded employment.)

Hours Worked

In Column 4, enter actual hours worked by all covered employees whose remuneration varies with the number of hours they work; for employees on a fixed stipend, scheduled weekly hours should be substituted.

Total Earnings

Column 5 must contain the total cash wages paid for each pay roll period.

Column 6 must show the total money value of all remuneration other than cash for each pay roll period (See Article VI, Sections 600-619, Rules and Regulations).

Column 7 must contain the total earnings of all covered employees for each pay roll period and should equal the total of Columns 5 and 6.

Under the request to explain any marked changes in the report, indicate any factor such as fire, flood, closing for repairs or inventory, re-opening after shut-down, etc., which will explain any abrupt change in your pay roll.

GENERAL INSTRUCTIONS

This Contribution Report is designed for listing of pay rolls ending within the period for which a report is made. Employers having several pay rolls on the same bases within the same period, such as weekly for laborers and semi-monthly or monthly for office employees, must make separate report of each pay roll on the same basis.

Fill out the report on typewriter or in ink. If you have separate pay rolls for separate establishments, enter the summary for each establishment on a separate sheet and attach to this form. The Commission will furnish extra copies on request.

Do not send cash. Remittance should be in the form of check or money order, payable to Alabama Unemployment Compensation Commission. Cash payments may be made to the Cashier of the Commission at 623 Adams Avenue, Montgomery, Alabama. (See Sections 717-719 Rules & Regulations.)

Additions for previous over-payments and deductions for previous under-payments can be made only upon specific authorization from the Commission and copies of such authorization should be attached to the report on which such corrections are shown. (See Section 716, Rules and Regulations.)

Send the original of the report to Alabama Unemployment Compensation Commission, Montgomery, Alabama, preserving monthly copy to facilitate verification by authorized representatives of the Commission. If one sheet is not sufficient to include all pay rolls of employers during reporting period, additional sheets of this form should be used, numbered 1, 2, 3, etc., in which event the monthly totals should be summarized and inserted only on Line L of the last sheet of the group.

Additional forms may be secured on application to the Commission.

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BROWN PRINTING CO., MONTGOMERY 1936

EXHIBIT - "E - 10" to COMPLAINT

EMPLOYERS MUST POST THIS CARD

Only the Cards Furnished by the Commission May Be Used.
Additional Cards May Be Procured by Registered Employers by Application to the Commission

Unemployment Compensation Law

NOTICE IS HEREBY GIVEN That _____ _____
Business Firm Name Address

is subject to the Unemployment Compensation Law of the State of Alabama and has registered as being subject to said law with the Alabama Unemployment Compensation Commission.

_____
Chairman

This card is furnished to all employers registered with the Commission for the purpose of advising workers that they are covered by the provisions of the Alabama Unemployment Compensation Law. For further information regarding this law address your communication to the Commission, Montgomery, Ala.

ALABAMA UNEMPLOYMENT COMPENSATION COMMISSION

[fol. 50] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING RESTRAINING ORDER, ETC.—Filed October 9, 1936

An original bill having this day been filed in the above styled cause and having been brought to the attention of the Court and the undersigned Judge of the Court, and it appearing to the Court that the complainant herein under Section 266 of the Judicial Code of the United States, as amended, has made an application for an interlocutory injunction based on the allegations contained in the bill of complaint, which is duly sworn to, and it further appearing to the Court that such application for such injunction and the relief prayed for in said bill of complaint is upon the ground of the unconstitutionality of the statute of the State of Alabama commonly known as the Unemployment Compensation Law; and it further appearing to the Court that irreparable loss or damage will result to the complainant unless a temporary restraining order is granted as therein prayed for, because:

(a) Respondents have declined to postpone the time set for the payment by complainant of contributions under the Alabama Act amounting to approximately $3,500.00, and have notified complainant that if it fails to pay such contributions on or before October 9, 1936, it will be treated in [fol. 51] default and all the provisions and penalties of the act will be enforced against complainant on account of such default;

(b) Such penalties and actions include an additional charge for interest at the rate of one percentum per month from October 9, 1936, the institution against complainant of actions or proceedings for the recovery of the contributions that are now due or may hereafter become due, the probable subjection of complainant, and its officers or agents, to a fine of not less than $20.00 nor more than $200.00, or imprisonment in the county jail not longer than sixty days, or by both, for its willful failure or refusal to

pay such contributions on or before October 9, 1936, and its probable prosecution as a separate and distinct offense for each day that such failure or refusal to pay such contributions continues; the probable subjection of complainant, and its officers or agents, to a fine of not less than $20.00 nor more than $200.00, or imprisonment in the county jail not longer than sixty days, or by both, for its willful failure or refusal to furnish the Commission the reports which said Commission had by its order required complainant to make on or before October 9, 1936, and to a prosecution as a separate and distinct offense for each day that such failure to pay such contributions continues, and it being practically impossible for complainant, within such time, to make such reports; because of the fact that a multiplicity of suits and the attendant large costs to which complainant will be subjected in the defense of such suits and actions is a reasonable probability.

(c) Respondents have expressed the intention of immediately, upon collecting the contributions, to dispose of them in compliance with certain provisions of the Alabama Act and the Federal Social Security Act, which will withdraw such contributions from the jurisdiction of any Alabama Court, and will leave the complainant without any adequate remedy for a refund or recovery of the same.

(d) It is impossible for an adequate hearing to be held on the petition for preliminary injunction prior to October [fol. 52] 9, 1936.

(e) No substantial injury will result to the respondents from the issuance of the restraining order and, on the contrary, immediate and irreparable injury, loss or damage, will probably result to the applicant.

It is, therefore, Ordered, Adjudged and Decreed by the Court as follows:

1. That upon complainant entering into a bond, with surety approved by the Clerk of this Court in the sum of $500.00, and conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined and restrained thereby, or by the deposit of a like amount in cash as like security with the Clerk of the Court, a temporary

restraining order be and the same hereby is granted as prayed for in said bill, and said respondents, their agents and employees, separately and severally, be and they hereby are temporarily restrained, until the further order of the Court, from directly or indirectly exercising or attempting to exercise any of the duties or performing or attempting to perform any of the functions sought to be conferred by said Alabama Act upon said Commission, or doing or performing any other acts of any kind or character under the claim of any authority sought to be given said respondents by the Alabama Act, or from in any way putting in operation or executing any order made by the Commission acting under and pursuant to the Alabama Act, or from enforcing or attempting to enforce, or operating or attempting to operate, or executing or attempting to execute, any section of the Alabama Act, or from enforcing or attempting to enforce, or executing or attempting to execute, any order made by any administrative board or commission acting under and pursuant to the Alabama Act; that such temporary restraining order shall remain in force only until the hearing and determination of the application for interlocutory injunction held upon notice as hereinafterwards provided for, and unless further extended by order of the Court not beyond ten days from the date hereof.

[fol. 53] 2. That this order be entered at once, endorsed with a date and hour of its issuance, to-wit, three o'clock P. M., October 9, 1936, and that it be forthwith filed in the Clerk's Office and entered of record.

3. That the Judge of this Court will immediately call to his assistance to hear and determine the application for a temporary injunction two other Judges, as provided for by said Section 266 as amended, of the said Judicial Code, and said application, subject to further orders of the Court, shall be and the same hereby is set down for hearing and determination in the court room of this Court at Ten o'clock A. M., on the 22nd day of October, 1936, and that at least five days notice of the time and place of such hearing be given to the Governor and to the Attorney General of the State of Alabama, and to each of the respondents herein named. It is further provided that the attorneys for the complainant are authorized to give such notice and to make proof of such service.

4. All other matters are reserved for such further orders as may seem just and proper in the premises.

This the 9th day of October, 1936.

C. B. Kennamer, Judge of the District Court of the United States for the Middle District of Alabama.

[fol. 54] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER SETTING CAUSE FOR HEARING—Filed October 29, 1936

Heretofore in this cause, on the 9th day of October, 1936, an order was made and filed on the same date, a full and complete copy of which order is hereto attached, marked Exhibit "A" and made fully a part hereof. Thereafter, at the request of the Attorney General, representing the then defendants to the bill, the hearing of the application for a temporary injunction was postponed from ten o'clock A. M. on the 22nd day of October, 1936, until ten o'clock A. M. on the 30th day of October, 1936.

On this, the 28th day of October, 1936, it was made known to the court that the Honorable Bibb Graves, individually, and as Governor of the State of Alabama, had not been given notice of the time and place of the hearing of the application for a temporary injunction before the statutory court and the court was notified that he desired the full five days notice as required by the statute.

It is, therefore, Ordered, Decreed and Adjudged that the hearing of the application for a temporary injunction be and the same hereby is set down for hearing and determination in the court room of this court at ten o'clock A. M. on the 18th day of November, 1936, before the statutory court consisting of Judge Samuel H. Sibley, Circuit Judge of the [fol. 55] Fifth Judicial Circuit and Judge R. T. Ervin, a District Judge and C. B. Kennamer, the District Judge to whom and in whose court the application for a temporary injunction was presented and filed, the former two having been in accordance with Section 266, as amended, of the Judical Code, called to the assistance of the undersigned to hear and determine said application.

It is further Ordered, Decreed and Adjudged that a copy of this order, including Exhibit "A" hereto attached, and

a copy of the amended bill filed herein be served by the Marshal of this Court, or one of his authorized deputies in person upon the Honorable Bibb Graves, individually and as Governor of the State of Alabama.

It is further Ordered, Decreed and Adjudged that the restraining order heretofore granted to the plaintiff by the court in this cause be continued in full force and effect until the Statutory Court shall have heard and disposed of said application for a preliminary injunction, which is set for hearing and determination as aforesaid on November 18th, 1936.

All other matters reserved for such other and further orders as may seem just and proper in the premises.

Dated this 29 day of October, 1936.

C. B. Kennamer, District Judge.

United States of America,
Middle District of Alabama, ss.:

I certify and return that on the 29th day of October, 1936, I received the within order and that I served a full, true and correct copy of the same together with all exhibits attached and all endorsements thereon and a copy of the amended bill of complaint on the Honorable Bibb Graves, individually and as Governor of the State of Alabama at his office in Montgomery, Alabama, on the 29th day of October, 1936.

Walter Bragg Smith, United States Marshal, by C. E. Smith, Deputy Marshal.

[fol. 56] [File endorsement omitted]

In United States District Court

[Title omitted]

Motion to Dismiss—Filed November 7, 1936

Come the defendants and respectfully move the Court to dismiss the amended bill of complaint in this cause and for grounds show:

1. There is no equity in the bill.

2. The plaintiff has a full, complete and adequate remedy at law.

3. The bill seeks to enjoin the administration and enforcement by the defendants of the Unemployment Compensation Law of the State of Alabama upon the alleged ground that said Act is violative of the Constitution of the United States and of the State of Alabama, when, for aught that appears in the bill, the said law is a valid Act of the Legislature of Alabama and violates no provision of either the Federal or State Constitution.

4. By the bill the plaintiff seeks to enjoin the defendants from executing the duties of their office with reference to the Unemployment Compensation Law of the State of Alabama upon the ground that said law is unconstitutional and void, when, as a matter of law, the said Act is valid, and it is the legal duty of these defendants to uphold, administer and enforce the same, as appears by the allegations of the bill.

5. The bill seeks to procure this Court's injunction of the defendants from discharge of their duties as officers of the State of Alabama under said State's Unemployment Compensation Law, upon the alleged ground that the enforcement of said law by these defendants, in pursuance of the terms of the law and of their official duties, will work irreparable injury to the plaintiff, when, in the meaning of [fol. 57] the term "irreparable injury" as known to the law and as defined by equitable rules and practices which prevail in this Honorable Court, such will not result to the plaintiff.

6. For aught that appears in the bill, the plaintiff by obeying the law, or by disobeying it, will not suffer irreparable injury, within the meaning of that term in law and in equity.

7. While the defendants are sued individually as well as in their official capacities, the bill is, in practical effect, a suit against the State of Alabama, and for aught that appears in the bill, the State has not given its consent to be so sued and no court has jurisdiction of said suit without the State's consent.

A. A. Carmichael, Individually and as Attorney General of the State of Alabama, Appearing Per Se and as Solicitor for all of the Defendants. Chas. L. Rowe and Peyton D. Bibb, Assistant Attorneys General of the State of Alabama. Inge & Stallworth, of Counsel.

[fol. 58] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER—Filed November 10, 1936

Come the defendants, jointly, separately and severally, and without waiving their right, or the rights of either of them, to have the cause dismissed upon the grounds set forth in the motion to dismiss, and reserving those rights, the defendants jointly, separately and severally, for answer to the bill of complaint as amended, state as follows:

1st. For answer to the first paragraph of the bill of complaint as amended the defendants admit the averments thereof.

2nd. For answer to the second paragraph of the bill of complaint as amended the defendants admit the averments thereof.

3rd. For answer to the third paragraph of the bill of complaint as amended the defendants admit the averments thereof.

4th. For answer to the fourth paragraph of the bill of complaint as amended the defendants say that the allegations thereof are only conclusions of law and not statements of fact, and are not warranted by the allegations of facts contained in the bill of complaint as amended. The defendants further specifically deny that the Federal act (Public No. 271) is the indispensable base of the State Act and fur- [fol. 59] ther deny that the State Act is wholly incapable of operation unless the Federal Act is valid, operable and constitutional as alleged in the bill of complaint as amended. Further answering the averments of said paragraph, the defendants say that the State Act is a separate and distinct enactment susceptible of full and complete operation in the manner intended by the Legislature of Alabama as expressed in said Act irrespective of the operation, existence or validity of the said Federal Act.

5th. For answer to the fifth paragraph of the bill of complaint as amended, the defendants admit the allegations thereof.

6th. (a) For answer to the sixth paragraph of the bill of complaint, as amended, the defendants admit that at the

times mentioned therein the plaintiff has been engaged in the State of Alabama in the business of mining and marketing coal as alleged. Defendants admit that all coal sold by it is delivered to the buyer f. o. b. car at the railroad station Boothton, Alabama, and that all its employees mentioned engage as such solely in the mining and preparing coal for the market and perform no duties in interstate commerce, and that in connection therewith the plaintiff has and has had at such times invested in lands, leases and plant property and equipment, including good will as alleged therein, at its place of business in excess of $100,000.00, and that at all times mentioned therein the plaintiff has employed in its operations three hundred employees in the State of Alabama.

(b) Defendants admit that coal production in Alabama is of a seasonable nature, and admit that the plaintiff operated its business for 193 average work days in 1930, 206 average work days in 1931, 116 average work days in 1932, 186 average work days in 1933, 214 average work days in 1934, and 159 average work days in 1935, but defendants deny that plaintiff's operations have been idle only for the number of average work days averred for these years, but say that plaintiff's own statement of the number [fol. 60] of days actually worked shows plaintiff's operations to have been idle a greater number of days during these several years. Defendants further deny that plaintiff's record of operation is consistent with the operations of other companies in Alabama engaged in the mining and sale of domestic and steam coal, but defendants are informed and believe and on such information and belief aver that the business of mining and selling coal in Alabama has been affected by the severe economic depression to a marked degree in curtailment of actual production, number of average work days of operation and number of persons employed. Defendants are not informed of the facts in reference to plaintiff's labor turnover or the source of plaintiff's labor supply or the labor supply of the coal mining industry in Alabama generally, whether from rural or industrial settlements, but deny the materiality or relevancy of such averments to the issues in this case, and to the extent that such averments may be material, demand strict proof thereof.

(c) Defendants aver that they are informed and believe that intrinsically plaintiff's business is not only seasonal but also otherwise dependent upon the expected fluctuation of orders for its products and that, while plaintiff has managed to keep the great majority of its employees on its pay roll, it has found it necessary always to limit the hours and days of their work according to the orders on hand and the sea-ons and the weather or for other reasons known to the plaintiff. Defendants further aver that, from the very nature of the plaintiff's operations, it is necessary to maintain and have available a force of laborers greater in number than can be profitably employed in its works over the entire year; and that the plaintiff, in fact, maintains this reserve labor pool in the operation of its businesses; and that, in order to have reserve labor available, when needed, the plaintiff resorts to the so-called spread of work, among all of its employees, by which scheme it results that many of plaintiff's employees at some substantial times or periods [fol. 61] during the year are required to lay off from work in plaintiff's operations for certain days during the ordinary work week, during which times plaintiff either operates with a lesser number of employees or suspends its operations altogether. In the reports of its operations filed with the Alabama Unemployment Commission for the period May 1st to September 30th, 1936, it clearly appears that substantial unemployment has existed during this year in plaintiff's business and that the employees of plaintiff have suffered from partial unemployment as high as fifty per cent or thirty-three and one-third per cent, according as the percentage is figured upon the maximum or minimum number of hours worked during the various two weeks' periods, as reported by plaintiff to the Alabama Unemployment Commission under the provisions of the Alabama Act. These defendants further say that under the history and the general conditions of the plaintiff's business and of the general business such as plaintiff is engaged in, it is clearly apparent that plaintiff's employees will benefit largely by the unemployment insurance set up under the Alabama Act and that the plaintiff itself will enjoy the beneficent effects of the Act in lessening the evils of unemployment in Alabama.

7th. For answer to the seventh paragraph of the bill of complaint as amended the defendants say that they admit

the averments thereof with respect to the amount due from plaintiff at the time of filing the original bill of complaint, but are not informed of the facts in reference to what amounts may be due in the future or the amount of plaintiff's future payrolls, and therefore neither admit nor deny such allegations.

8th. For answer to the eighth paragraph of the bill of complaint as amended the defendants admit the averments thereof.

9th. (a) The defendants admit the allegation contained in paragraph IX of the bill of complaint that the Governor of the State of Alabama duly appointed the defendants Kaufman, Brown and Lipscomb as members of the Alabama [fol. 62] Unemployment Compensation Commission pursuant to the powers vested in him by Section 9 of the Alabama Act. The defendants further admit that the defendant Kaufman was designated as Chairman of said Commission, that said Commission, as duly constituted, is legally performing all such acts as are required of it by the Alabama Act, and that it has opened and is maintaining its offices in the City of Montgomery, Alabama.

(b) The defendants deny that said Commission has engaged the services of any person or employee other than those authorized pursuant to section 10(d) of the Act or has utilized the services of any person other than those authorized by section 10(d) of the State Act. The defendants further deny that they have engaged in any publication activities other than those authorized by section 10(c) of the Act, nor spent any funds for any publication purpose other than those prescribed by section 10(c).

(c) The defendants admit that the Commission has issued rules and regulations with reference to the Records and Reports covering contributions payable, employment and related matters required of employers pursuant to section 10(g) of the Alabama Act and has required such reports and records to be filed with the Commission. The defendants further state that the rules and regulations issued relative to the records and reports to be kept and filed by employers are reasonable and properly adapted to insure the efficient and effective administration of the Act.

(d) Defendants deny that they have notified or threatened the plaintiff or any other employer in the State of Ala-

bama, and subject to the terms of the Act, that they intend to enforce the penalties prescribed by the Alabama Act, sections 14 and 15 thereof, for the violation of any of the provisions of said Act, other than in the manner provided by the Act, which can be accomplished only in an orderly proceeding in a court of competent jurisdiction and in which [fol. 63] the plaintiff could assert by defense every right, claim or immunity which it seeks to assert in this suit.

(e) The defendants deny that they have threatened the plaintiff or any other employer subject to the provisions of the Alabama Act that in the absence of compliance by the plaintiff with the provisions of the Alabama Act, they will not issue certificates with respect to credits under Title IX of the Federal Social Security Act, but state that they have no power to compel the granting or denial of any credit under Title IX of said Federal Act and that unless the contributions required of the plaintiff are paid, no receipt therefor such as may entitle plaintiff to claim any credit under Title IX of the Federal Act can be issued.

(f) The defendants admit that they will proceed to administer the Alabama Act in accordance with the provisions thereof.

(g) The defendants admit that Exhibits E and E-1 to E-10, inclusive, constitute true and correct copies of documents and papers prepared and circulated by the Commission.

10th. For answer to the tenth paragraph of the bill of complaint as amended the defendants admit the plaintiff pays substantial sums as ad valorem and other taxes to the State of Alabama and the counties, but deny the materiality thereof to the issues in this case, and deny the claimed right of the plaintiff to maintain this suit as a taxpayer of the State of Alabama.

11th. For answer to the eleventh paragraph of the bill of complaint as amended the defendants deny separately and severally all of the allegations contained therein save only that relative to the deposit of the contributions collected under the Alabama Act in a trust fund created by the Federal Act.

Further answering said paragraph eleventh defendants say that the Alabama Act is an independent and complete

[fol. 64] enactment, and is not so inextricably interlocked with or dependent upon the Federal Act that, in the event of the invalidity or unconstitutionality of the Federal Act the Alabama Act must necessarily fall therewith. The defendants aver that the provisions of the State Act relative to the deposit of the contributions collected thereunder are as follows:

"SECTION 3. Unemployment Compensation Fund.—(a) Fund.—There is hereby created the Unemployment Compensation Fund, to be administered by the commission without liability on the part of the state beyond the amounts paid into and earned by the fund. This fund shall consist of all contributions and money paid into and received by the fund as provided by this Act, of property and securities acquired by and through the use of moneys belonging to the fund, and of interest earned upon the moneys belonging to the fund.

"(b) Withdrawals.—The fund shall be administered in trust and used solely to pay benefits, upon vouchers drawn on the fund by the commission pursuant to general commission rules and no other disbursement shall be made therefrom. Such rule shall be governed by and consistent with any applicable constitutional requirements, but the procedure prescribed by such rules shall be deemed to satisfy (and shall be in lieu of) any and all statutory requirements (for specific appropriation or other formal release by state officers of state moneys prior to their expenditure) which might otherwise be applicable to withdrawals from the fund.

"(c) Treasurer.—The commission shall designate a treasurer of the fund, who shall pay all vouchers duly drawn upon the fund, in such manner as the commission may prescribe. He shall have custody of all moneys belonging to the fund and not otherwise held or deposited or invested pursuant to this act. The treasurer shall give bond conditioned on the faithful performance of his duties as treasurer of the fund, in a form prescribed by statute or approved by the attorney general, and in an amount specified by the commission and approved by the governor. All premiums upon bonds required pursuant to this section when furnished by an authorized surety company or by a duly constituted governmental bonding fund shall be paid from the

unemployment administration fund. The treasurer shall deposit and/or invest the fund under the supervision and control of the commission, subject to the provisions of this Act.

"(d) Deposit.—All contributions paid under this Act shall upon collection be deposited in or invested in the obligations of the 'Unemployment Trust Fund' of the United States Government or its authorized agent, so long as said [fol. 65] trust fund exists, notwithstanding any other statutory provision to the contrary. The commission shall requisition from the Unemployment Trust Fund necessary amounts from time to time."

That the provisions of the Federal Act for the creation of a trust fund in which the contributions collected under the Alabama Act may be deposited and withdrawn are as follows:

"904(a). Unemployment Trust Fund; Establishment; Investment; Payments to States.—(a) There is hereby established in the Treasury of the United States a trust fund to be known as the 'Unemployment Trust Fund', hereinafter called the 'Fund'. The Secretary of the Treasury is authorized and directed to receive and hold in the Fund all moneys deposited therein by a State agency from a State unemployment fund. Such deposit may be made directly with the Secretary of the Treasury or with any Federal reserve bank or member bank of the Federal Reserve System designated by him for such purpose.

(b) It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investment may be made only in interest bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at par, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of special obligations exclusively to the Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such issue, borne by all interest-

bearing obligations of the United States then forming part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 per centum next lower than such average rate. Obligations other than such special obligations may be acquired for the Fund only on such terms as to provide an investment yield not less than the yield which would be required in the case of special obligations if issued to the Fund upon the date of such acquisition.

(c) Any obligations acquired by the Fund (except special obligations issued exclusively to the Fund) may be sold at the market price, and such special obligations may be redeemed at par plus accrued interest.

(d) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

[fol. 66] (e) The Fund shall be invested as a single fund, but the Secretary of the Treasury shall maintain a separate book account for each State agency and shall credit quarterly on March 31, June 30, September 30, and December 31, of each year, to each account, on the basis of the average daily balance of such account, a proportionate part of the earnings of the Fund for the quarter ending on such date.

(f) The Secretary of the Treasury is authorized and directed to pay out of the Fund to any State agency such amount as it may duly requisition, not exceeding the amount standing to the account of such State agency at the time of such payment."

Defendants aver that under the above cited provisions of the State and Federal Acts the withdrawal and release of said funds when so deposited in the Unemployment Trust Fund are exclusively and wholly at the discretion of the Unemployment Compensation Commission, when made and done for purposes provided by the Alabama Act and in pursuance of the terms of the Alabama Act.

These defendants deny that the only provision made for the expenses of administering the Alabama Act is an appropriation of Federal funds provided by the Federal Act for such purposes. Defendants aver that the pertinent provisions of the Alabama Act are:

"SECTION 16. Unemployment Administration Fund.—

(a) Special Fund. There is hereby created the 'Unemployment Compensation Administration Fund', to consist of all moneys received by the State or by the commission for the administration of this Act or appropriated by the State for the purposes of this act and actually paid into such fund This special fund shall be handled by the State treasurer as other State moneys are handled; but it shall be expended solely for the administration of this Act and other purposes herein specified, and its balances shall not lapse at any time but shall remain continuously available to the commission for expenditure consistent herewith.

(b) Federal Aids. All Federal moneys allotted or apportioned to the State by the Federal Social Security Board (or other agency) for the administration of this act shall be paid into the unemployment administration fund. Subdivision C. Whenever requested by the Unemployment Compensation Commission to perform certain acts in connection with the Unemployment Compensation Commission, the Alabama State Employment Service shall perform such acts as are requested and in the manner prescribed by the Unemployment Compensation Commission as expeditiously and economically as may be, and shall render to the Unemployment Compensation Commission a statement of the actual expenses incurred by the Alabama State Employment Service, and the manner in which they were performed, whereupon the Unemployment Compensation Commission shall pay to the Alabama State Employment Service the amount of such expenses incurred."

[fol. 67] "SECTION 17. Appropriations.—All moneys in the unemployment administration fund at any time are hereby appropriated to the Unemployment compensation Commission."

"SECTION 9. (b) Salaries.—The Chairman of the commission shall be paid a fixed monthly salary, at the rate of $3,600.00 per year of service, from the unemployment administration fund. The compensation of the associate members shall be ten ($10.00) dollars per day for days actually spent upon the business of the commission, and necessary travelling expense."

These defendants admit that the expense of administration, together with salary of the Chairman and Members of

said Commission and of employees thereof, are now and at all times have been paid from funds allocated to the said Commission under the provisions of the Federal Act; that the amount now being expended by the Alabama Unemployment Compensation Commission from the Federal funds so allocated to it for said purposes under the provisions of the Federal Act is at the rate of approximately $100,000.00 per annum.

The defendants further admit that there has never been actually deposited in the Unemployment Administration Fund, provided for in Section 16 of the Alabama Act, any funds other than funds allotted and provided by the Federal Government for that purpose.

Defendants admit that the amounts allocated and to be allocated to the Alabama Administration Fund are determinable solely by Federal Agencies under the terms of the Federal Act and are made available to the Alabama Commission only as Federal Agencies make them available. Further answering said paragraph eleventh these defendants say that the Federal statute is constitutional, does not control or regulate the purely domestic affairs of the states and particularly that the Social Security Act does not in any way purport to, nor does it, control or regulate either compulsory insurance, pensions, minimum wages or relation-
[fol. 68] ships between employers and employees. The exactions of the Federal Act upon employers and employees are federal taxes and are not by the statute earmarked for the control by Congress of any affair of any state; defendants further answering say that the Federal Act does not seek to deprive employers and employees of their liberty to contract nor does it interfere with their free control of the details of their personal business and personal conduct. The Federal Act only sets up certain conditions under which employers may be allowed credit for their contributions to an Unemployment Insurance Fund under such Act as the individual states may enact, containing certain definitely fixed identifying details as prescribed by the Federal Act.

12th. For answer to the twelfth paragraph of the Bill of Complaint as amended the defendants specifically deny separately and severally every averment, statement and legal conclusion therein contained. Defendants further aver that the Alabama Act was duly and properly enacted by the Legislature of the State of Alabama and duly and properly

approved by the Governor of the State of Alabama in lawful, constitutional, and proper exercise of the reserved police power of the soverign State of Alabama, and that no provision thereof violates any provision of the Constitution of the United States. Further answering, defendants aver that any statements or averments contained therein with respect to any employer or employee other than the particular plaintiff herein itself are irrelevant and immaterial in this suit.

Further answering the bill of complaint as amended defendants say that there is no singling out of the plaintiff [fol. 69] and others similarly situated, but that under the terms of the State Act, as well as the Federal Act, burdens and responsibilities are fixed generally upon all employers in industry, throughout the State and nation, from which the evils of unemployment have been shown by common experience known to all to have arisen; that for the successful operation of any plan of unemployment compensation the base upon which the necessary reserves are made to rest must be sufficiently broad to embrace substantially all employers whose industry substantially contributes to the unemployment problem.

13th. For answer to the thirteenth paragraph of the bill of Complaint as last amended the defendants specifically deny each and every averment, statement and legal conclusion therein contained. Further answering, the defendants say that the Alabama Act, and the amendments thereto, were duly and properly enacted by the Legislature of Alabama and duly and properly approved by the Governor of Alabama in proper constitutional and legal exercise of the reserved police power of the Sovereign State of Alabama and that no provision of such act, as amended, violates any provision of the Constitution of the State of Alabama. Further answering, the defendants say that any averments or statements contained therein with respect to any rights of others or of any other employers and employees or the employees of the plaintiff are immaterial and irrelevant to the issues in this proceeding.

14th. For answer to the fourteenth paragraph of the bill of complaint as amended the defendants deny the averments thereof, and further say that any averment or speculation in reference to the reason or reasons why the Alabama Act

was adopted by the Legislature of Alabama is wholly immaterial and irrelevant.

[fol. 70] 15th. For answer to the fifteenth paragraph of the Bill of Complaint as amended, the defendants deny all of the allegations thereof, save only as hereinafter appears.

Further answering, defendants say that the averments thereof relative to the motive and object of the Federal Congress in enacting Title IX of the Federal Act is not a subject of inquiry in any court of law or equity. Defendants specifically deny that the provisions of said Title IX were enacted to coerce and force any state and specifically the State of Alabama to adopt laws conforming to the will of Congress as to what is the suitable legislation upon this subject; and they deny that the enactment of said Title IX deprives the State of Alabama of its fredom of action in determining for itself what laws are necessary and desirable within its borders concerning the subject of unemployment compensation. Defendants deny that the Legislature of Alabama was in fact coerced in the enactment of the Alabama Act. They admit that Section 5½ of the Alabama Act, set out in said paragraph, and attached to the Bill of Complaint as amended as an exhibit thereto, was enacted by the Legislature of Alabama and approved by the Governor of said State, as therein alleged.

16th. For answer to the sixteenth paragraph of the Bill of Complaint as amended the defendants deny the allegation thereof that there are not adequate provisions for return and refund of contributions required of this plaintiff and its employees in the event the Alabama Act is declared unconstitutional and void. As a part of their answer to this paragraph, the defendants specifically refer to Paragraphs 5½ of the Act, exhibited to the Bill of Complaint as amended, and *they further say* that upon inquiry made by the Attorney General of Alabama to the Secretary of the Treasury of the United States, as to the construction by that Department of the Federal Act insofar as is concerned any provision for the refund of moneys deposited under the Alabama Act in the Unemployment Trust Fund provided for by the Federal Act, in the event that the Alabama Act be held [fol. 71] unconstitutional or invalid, that said Secretary of the Treasury forwarded to said Attorney General two rulings of said Department, addressed to the Attorney General of New York and to the Attorney General of California; and

advised the Attorney General of Alabama that the said rulings so made represented the views of the Secretary of the Treasury; and that action would be taken, in the event that the contingency arose, as outlined therein.

The two rulings of the said Secretary of the Treasury are as follows:

"The Secretary of the Treasury

Washington

April 22, 1936.

MY DEAR ATTORNEY GENERAL:

I acknowledge receipt of your letter of April 16, 1936, in which you inquire the views of this Department concerning the disposition of funds deposited in the Unemployment Trust Fund representing contributions by employers in the State of New York in the event that the United States Supreme Court should reverse the decision of the New York Court of Appeals sustaining the validity of the New York Unemployment Insurance Act.

It is the view of this Department that the money in the Unemployment Trust Fund standing to the credit of a State agency is and will at all times remain the equitable property of the State or Agency in question. The Treasury Department, in accordance with its interpretation of the law, will under all circumstances honor requisitions duly made by any State agency, to the extent of any balance standing to its credit in the fund.

If the New York State Unemployment Insurance Act should finally be adjudged invalid, this would not in my opinion deprive the State of New York of its equitable interest in the Unemployment Trust Fund. The question how and by whom the money could then be 'duly' requisitioned appears to be primarily a question of state law. Upon satisfactory evidence of the authority of the State Industrial Commissioner to withdraw the money in that contingency, and subject to necessary procedural requirements, I should be prepared to honor a requisition for the full amount standing in the Unemployment Trust Fund to the credit of the State Agency.

Very truly yours, Wayne C. Taylor, Acting Secretary of the Treasury."

[fol. 72] "The Secretary of the Treasury

Washington

June 18, 1936.

DEAR SIRS:

Receipt is acknowledged of your letter of June 4, 1936, referring further to the withdrawal of contributions deposited by the State of California in the Unemployment Trust Fund established by Section 904 of the Social Security Act, in the event said Act should be declared unconstitutional at some subsequent date.

I regret exceedingly that our letter of May 28 did not contain a copy of the letter of April 22, addressed to the Attorney General of the State of New York on the same subject. You will find a copy of that letter enclosed herewith.

Thank you for the information relative to Section 2 of the California Act as passed by the 1935 Session of your legislature. In view of the fact that the California Act would automatically become inoperative in the event of the invalidation of Title IX of the Social Security Act, you may be assured that this Department would honor a requisition duly made by the State Agency to the extent of any balance standing to its credit in the fund.

Very truly yours, Josephine Roche, Acting Secretary of the Treasury."

These defendants further allege that, in view of the departmental rulings hereinabove set out and in view of the provisions of the laws of the State of Alabama, in the event the Alabama Act is declared invalid or unconstitutional by the Supreme Court of Alabama or by the Supreme Court of the United States, that the contributions exacted of the plaintiff and its employees may be refunded to it and to them.

Defendants admit that, insofar as they are informed, no suit is now pending before the Supreme Court of the United States to determine the validity of Titles III or IX of the Federal Act; but they deny that it may reasonably be expected that three years will expire before the Supreme Court of the United States will finally decide the constitutionality or validity thereof. They say that they reasonably expect that the constitutionality of Titles III and IX of the Federal Act will be finally determined by the Supreme Court of the

United States long before any of the contributions exacted [fol. 73] of plaintiff and its employees and to be deposited in the Unemployment Trust Fund provided by the Federal Act, may be paid out as benefits to unemployed persons as is provided for by the Alabama Act; and they therefore aver that the probability is great that a final adjudication upon the validity of the said Titles of the Federal Act, and of the Alabama Act, will be made long before any withdrawals or expenditures of said contributions may be legally made, and at a time when, if either of said laws is held invalid, the contributions will be intact and immediately available for refund as provided by the law.

The defendants deny that in determining the question presented as to the validity and constitutionality of the Alabama Act under the Constitution of the United States and under the Constitution of the State of Alabama it is necessary to construe the provisions of the Federal Act and to determine whether Titles III and IX of the Federal Act are constitutional. They deny that either or both of said titles of the Federal Act are unconstitutional as being repugnant to the Constitution of the United States in any of the particulars alleged in said paragraph, or in any other particular.

17. For answer to the seventeenth paragraph of the Bill of Complaint as amended, the defendants deny that the Federal Act is designed to regulate in an unconstitutional manner matters concerning the life, liberty and property of citizens of the United States; and they deny that the taxes levied by the Federal Act are mere exactions in an attempt, through the taxing power of the Congress, to regulate concerns over which the United States has no control.

They allege, however, that constitutionality vel non of the said Federal Act is not properly before this Honorable Court, and that a decision thereon is not necessary to the issues raised in this suit.

18th. Defendants deny all of the allegations of the eighteenth paragraph of the Bill of Complaint as amended relative to irreparable injury to the plaintiff; and all of [fol. 74] the allegations thereof that the plaintiff has no adequate remedy at law, unless the injunctions prayed for in said suit are granted.

And defendants specifically deny all of the allegations of Sub-paragraph (a), Subsections 1, 2, 3, 4 and 5 thereof; and

further say that the allegations of the said Sub-paragraph and Subsections are mere conclusions of law or of fact.

Answering Sub-paragraph (b), and the several Subsections thereof, defendants admit that if the plaintiff refuses to pay the contributions as required by the Alabama Act, it will submit itself to proceedings by the defendants, as provided by the said Act for the collection of the contributions thereby provided.

It denies that, as yet, the defendants have undertaken to have imposed any fine or imprisonment for violation of any provision of the Alabama Act for which a penalty is not thereby expressly provided. They admit, however, that in the event that plaintiff had refused to pay said contributions, as required by the Act, that they would perform the duties imposes upon them by the said Act.

The defendants neither admit nor deny the allegations of Subsection 4 of said Sub-paragraph (b); but they aver that under the circumstances detailed, the Alabama Unemployment Commission would not be authorized to certify to the Secretary of the Treasury of the United States that plaintiff had complied with the provisions of the Alabama Act.

They deny that under the circumstances detailed, plaintiff would be harassed and put to large expense in the defense of an unseemly multiplicity of suits in the attempt to collect the contributions provided by the Alabama Act or by the Federal Act.

In answering Sub-paragraph (c), and the several Subsections thereof, the defendants deny that the Alabama Act provides no remedy for the recovery of any such amount, in the event it be judicially ascertained by a court of final resort that the plaintiff is entitled to refund of said contributions paid. For further answer to said Sub-paragraph and the several subsections thereof, the defendants adopt all of the allegations of their answer hereinabove contained in Paragraph 16 hereof.

[fol. 75] 19th. The defendants admit that there are a large number of employers of eight or more employees in Alabama who come within the provisions of the Alabama Act and of the Federal Act. But defendants deny that the general interest, alleged in the ninteenth paragraph of the

Bill of Complaint as amended, of the other employers of labor, is such as authorizes the plaintiff in this cause to sue for and on behalf of the said alleged class.

20th. Answering the twentieth par-graph of the Bill of Complaint as amended, defendants aver that even if many suits are filed by employers of eight or more persons, similar to this suit, that the alleged multiplicity of suits is not a matter of which this plaintiff may complain, and that the alleged multiplicity of suits is no ground for equitable interference insofar as this plaintiff is concerned.

21st. Answering the twenty-first paragraph, defendants say that they have made known to plaintiff and to all other employers of labor in Alabama that they will perform all of the duties imposed upon them by the Alabama Act; but they deny that unless the injunctions prayed for in the Bill of Complaint as amended are granted that the acts of these defendants in the performance of their duties under the Alabama Act will work irreparable injury upon this plaintiff.

And now, having fully answered the Bill of Complaint as amended in said cause and all of the charges and allegations therein contained, these defendants pray that it be ordered, adjudged and decreed by the court that the plaintiff is not entitled to the relief sought in this Bill of Complaint as amended, and that these defendants may go hence with their legal costs in this behalf expended.

A. A. Carmichael, Attorney General of Alabama; Chas. L. Rowe, Assistant Attorney General of Alabama; Peyton D. Bibb, Assistant Attorney General of Alabama; Inge & Stallworth, Attorneys for the Defendants.

[File endorsement omitted.]

[fol. 76] *Duly sworn to by Albert A. Carmichael. Jurat omitted in printing.*

[fol. 77] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO SUBMISSION, etc.—Filed November 18, 1936

It is agreed that the plaintiff's application for an interlocutory injunction as prayed for in its amended bill of complaint shall be submitted to the Statutory Court upon:

A. The Bill of Complaint as amended;

B. The orders of the District Judge or Court which have been made or may be made in the case prior to submission;

C. Proof of Service and notice given of such papers as have been served and such notices as have been given.

D. Defendant's motion to dismiss.

E. Defendant's answer.

F. The written affidavits of plaintiff not to exceed 12 in number, the originals to be filed with copies to be furnished to the Attorneys for the Defendants not later than the 7th day of November, 1936, with the further understanding that said affidavits shall be approximately in substance and in length as are the copies of affidavits which have been submitted to attorneys for the defendants contemporaneously herewith.

G. The written affidavits of defendants not to exceed 12 in number and to be filed in court with copies to be furnished to attorneys for plaintiff, not later than the 16th day of November 1936. Said affidavits to be in rebuttal of the affidavits of plaintiff and in proof of the averments of the answer.

It is further agreed and understood that such affidavits shall be considered by the court as if affiants had appeared and testified personally with the further provision that only such portions of said affidavits shall be considered by the court as may be material, relevant and competent herein, and that neither party admits the truth of the matters contained in the affidavits offered by the opposing party.

It is also agreed by the parties, without plaintiff waving insistance on its said application for an interlocutory injunction that said case will be submitted for final decree upon the same pleadings and evidence as above set forth and noted for the submission of the application for the interlocutory injunction.

Dated this 2nd day of November, 1936.

Borden Burr, Neil P. Sterne, Marion Rushton, Attorneys for Plaintiff. A. A. Carmichael, Attorney for Defendants.

[File endorsement omitted.]

[fol. 78] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING TEMPORARY INJUNCTION—Filed November 18, 1936

This matter coming on for hearing that upon application of plaintiff for a temporary injunction, and the same having been submitted upon the sworn allegations of the bill, and upon testimony offered and noted in open court,

And the court being of the opinion and finding that plaintiff is entitled to a temporary injunction as prayed for in the original bill,

It is, therefore, Ordered and Decreed as follows:

That an injunction to remain in effect until final decree herein be and the same is hereby granted, ordered and issued the plaintiff upon the same terms and upon the same conditions as the temporary restraining order issued herein by the Honorable C. B. Kennamer, Judge of the District Court with the following exceptions and additions:

a. The expiration date of this temporary injunction shall be the date of final decree in the above entitled proceedings.

b. The Attorney General of Alabama, as counsel of record for the defendants, in open court consenting it is ordered that all payments made to the First National Bank of Montgomery, Alabama, as designated depository of this court in accordance with the terms of temporary order or orders

heretofore granted herein and all such payments hereafter made in accordance with either the said temporary order or orders or this temporary injunction, or any permanent injunction which may issue herein, shall be regarded and shall stand as payments to or for the account of the Alabama Unemployment Compensation Commission in such wise as to authorize certification by the Alabama Unemployment [fol. 79]Compensation Commission of the payment of such sums for credit under Title IX of the Federal Social Security Act, but without prejudice to all parties in the matter, and subject to such further or supplemental orders as may be rendered herein.

Dated at Montgomery, Alabama, this 18th day of November, 1936.

(Signed) Samuel H. Sibley, Robert T. Ervin, C. B. Kennamer.

[File endorsement omitted.]

[fol. 80] In United States District Court

[Title omitted]

Stipulation as to Evidence—Filed January 20, 1937

It is hereby stipulated and agreed between counsel for plaintiff and defendants in the above styled cause that a full, true and correct statement of the evidence in said cause, under Equity Rule 75, consists of the following:

1. The affidavits introduced in evidence by plaintiff being the affidavits of Joseph Halfpenny, Allen Little, W. W. Fulgham, George F. Peter, A. R. Forsyth, H. D. Warner, Herbert S. Craigmile, Richard H. Childers, Alex C. Wilman, Herbert S. Salmon and J. M. Jackson, Jr.,

2. The affidavits introduced in evidence by the defendants being the affidavits of F. W. Gist, J. L. Kaufman and Peyton D. Bibb.

3. The verified bill of complaint as last amended filed herein and treated as an affidavit in evidence.

4. The verified answer of the defendants filed in this cause (and treated as an affidavit in evidence).

Albert A. Carmichael, Attorney General, State of Alabama; Chas. L. Rowe, Assistant Attorney General, State of Alabama; Peyton D. Bibb, Special [fol. 81] Assistant of the Attorney General of the State of Alabama; Nicholas E. Stallworth, First National Bank Building, Mobile, Alabama; Attorneys for the Defendants. Borden Burr, Birmingham, Alabama; Neil P. Sterne, Anniston, Alabama; Marion Rushton, Montgomery, Alabama, Attorneys for Plaintiff. Benners, Burr, McKamy & Forman, Birmingham, Alabama; Knox, Acker, Sterne & Liles, Anniston, Alabama; Rushton, Crenshaw & Rushton, Montgomery, Alabama, of Counsel for Plaintiff.

ORDER

The foregoing stipulation and the Statement of Evidence as therein stipulated is approved as a true, complete and properly prepared statement of the evidence at the trial of this cause, and may be filed in the clerk's office, and become a part of the record.

This, the 20th day of January, 1937.

Samuel H. Sibley, Circuit Judge; Robert T. Ervin, District Judge; Chas. B. Kennamer, District Judge.

[File endorsement omitted.]

[fol. 82] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF JOSEPH HALFPENNY—Filed November 17, 1936

STATE OF ALABAMA:

Before me, the undersigned authority for said county in said state, personally appeared Joseph Halfpenny who, being duly sworn, deposes and says:

Statement as to Qualifications and Sources and Bases of Statistical Conclusions

I am and have been for the past ten years engaged in the profession of statistician. I have taken complete courses in statistical methods. For approximately seven years I was Assistant Chief of the Bureau of Statistics of a large industrial concern. My business for the last ten years has been mainly connected with statistical researches and conclusions and economic surveys.

[fol. 83] I have made statistical researches and surveys in connection with matters arising under the Alabama Unemployment Compensation Statutes as hereinafter more fully referred to.

Attached to this affidavit and identified as the appropriately lettered exhibits are certain tables which present the statistical status of certain matters therein designated. In each instance the tables have been compiled by me or under my supervision, and, in my opinion as a statistician, they are substantially correct and present a substantially accurate presentation of the situations dealt with. In producing these tables I have used as the bases Census findings as published by the United States Bureau of Census and certain supplemental surveys and studies of the Census Bureau, I have also used statistical publications of the United States Bureau of Labor. In each instance the bases used by me has or have been the official publication or publications of one or the other of the governmental agencies above referred to. In a number of the tables the Census figures for the year 1930, dealing with volume of employment and similar matters are used. There has, of course,

been no complete Census since 1930, and this is the last year for which comprehensive figures dealing with all the matters mentioned are available.

I am, however, in position to express, as an ascertained fact, that the levels and volumes of employment in the State of Alabama as they existed in the year 1930 were practically the same as they exist at the present time, except that there has been a substantial increase in the number of persons [fol. 84] employed in agriculture, the increase as indicated by Government Surveys being approximately 20%. There are kept by me continuous and progressive studies of fluctuations in respect of these matters, and from these studies, with all of which I have continuous familiarity, I have knowledge that the volume of employment existing in Alabama at the present time is approximately the same as for the year 1930; that is to say, the figures of employment and cognate matters for the year 1930 we know, from our statistical studies, to be the figures existing at the present time with the various pluses or minuses being only in minor percentages not sufficient in any way to affect the general trends therein shown. It should, therefore, be understood that wherever 1930 figures are given unless I have indicated to the contrary, substantially the same figures, the same percentages and the same statistical situation exist in the State of Alabama as of the present time.

Comments and Explanations as to Table "A"

Table hereto attached, designated as "A" shows as of the census year 1930 (known to closely approximate the statistical situation as of the present time) several groupings of employment as affected by, or excluded from, the operation of the Alabama Unemployment Compensation Act. The figure therein shown as grand total, 1,026,320, is the total number of persons gainfully employed, subdivided into those employed in the various occupations which are not exempt from the Act, the latter being shown in Column "A" by occupational groups, the total being 377,575.

[fol. 85] In Column "E" are shown by occupational groups the number of persons employed in the industries or lines of activity exempted from the Act, the total being 648,745.

Column "B" shows the workers in non-exempt industries as reported by industries in the 1930 census.

The margin of difference between the occupation census and reported by industries is approximately what is to be expected from statistical experience in matters of this nature.

Column "C" shows the employees of establishments which are in lines of business not exempted from the operation of the statute, but which establishments employ each less than eight persons, and also includes firm members and proprietors, It should be explained that the figures used in Column "C" are an estimated conclusion derived from the other figures given and from economic experience and test surveys, the variation in the figures used in Column "C" however, would not exceed five percent either way.

Column "D" shows the number of employees excluded neither by exemption nor by minimitude of personnel,—that is to say, the number of employees covered by the Act, and is derived by deducting the figures in Column "C" from the figures in Column "A".

Comments and Explanations as to Table "B"

Table hereto attached, designated as "B" shows the persons gainfully employed in Alabama by major occupational [fol. 86] groupings for the year 1930, the percentages represented by the said figures, and the comparative percentages for the United States as a whole. The occupational figures given in Table "B" are in groupings as shown by the census publications. Wherever the classification is the same as the classification in Table "A" the figures are the same, there being, however, more detailed break-downs in "A" than in "B".

Comments and Explanations as to Table "C"

Table hereto attached and designated as "C" presents a calculation of the revenue which will be produced by the Alabama Act, assuming a level of employment for the years 1936, 1937 and 1938 paralleling the year 1930. As heretofore explained comparative surveys and researches establish that the figures at the present time parallel the 1930 figures. For 1937 and 1938 the volume of wage increment is, of course, a matter of prediction. The figures shown for the years 1937 and 1938 are the revenues which will be produced under the Alabama Statutes for those years, if the

wage increment for said years be the same as for 1930. The statutory rates are used for the periods in which the Act was an- will be effective in the current year, that is to say, as to employer contributions for the entire year and as to employee contributions for the last eight months of the year. The 1937 and 1938 figures shown in the table are for the entire year, (on an increasing scale as to employer contributions). The pay roll increments are derived by applying to total employment as disclosed in the census average earnings as ascertained by the census.

[fol. 87] Comments and Explanations as to Table "D"

Table hereto attached designated "D" shows in the case of wage earners and salaried employees comparatively the earnings at the several recognized rates of pay, the contributions made by employee and employer on account of the amount so earned, and the total maximum benefits which the employee would draw, assuming that he was unemployed for the greatest length of time compensible, and under the conditions most favorable to the drawing of maximum compensation; that is to say, assuming maximum unemployment to set in at the earliest time which qualifies for participation in the benefits provided by the Act.

In the table the hourly rates are set forth in accordance with the recognized gradations of earnings as to the wage class and the recognized major gradations of earnings as to the salaried employees, the highest wage bracket used being one dollar per hour and the highest salary bracket used being twenty-thousand dollars per annum.

[fol. 88] Statement as to Non-Existence of Surveys or Researches in Respect of Present, Past or Anticipated Incidence of Unemployment

I am familiar with all industrial economic surveys and researches which have been made in the State of Alabama within the last ten years or which have been at any time within the last ten years available in Alabama. No such data showing any general unemployment experience, absolute or proportional, have ever existed in Alabama, except that the Census of 1930 showed unemployment figures as of April first and November first of that year. However there being no figures previous or subsequent to show flow

and trend, and therefore, no competent average or competent tendency being determined or determinable, the State of Alabama is without any basis upon which to calculate or estimate unemployment probably to be anticipated even under the prevalence of normal conditions. Therefore, there are no statistical data from which the adequacy either of rates or contributions or rates of benefits could be determined.

I am unable to express an opinion as to whether rates of contribution and rates of benefits provided by the Alabama Act are too high or too low, and from the knowledge I have of the principles of statistical method I am in position to state that no other statistician and no economist could reach such a conclusion, there being an utter lack of base. Both the rates of contributions and the rates of benefits are neces- [fol. 89] sarily determined arbitrarily and without guide of standard.

The figures set forth in the various tables I have appended deal with known employment and known or ascertainable earnings. In this field we have affirmative figures. In the field of unemployment there has been no study, survey or compilation, and in the absence of such production of data, unemployment, existing and anticipated, contributions necessary to create adequate unemployment compensation, and the amounts which would be adequate compensation must necessarily remain neither known nor susceptible of estimation nor susceptible of being fixed except at arbitrarily selected figures.

This statement does not mean to suggest that individual plants could not, by analysis of their records and supplemented by investigation of representative groups leaving the service, arrive at an approximate constructive application of the Act applied to past years; but relatively few, if any, plants in the State can supply that information from records hitherto maintained and no reports for such information have heretofore been called for by public authority, State or Federal. Nor have there been any public hearings or testimony relating to the matter by any public or legislative authority in Alabama.

In short, as to employer and employe in the aggregate subject to the Act, there is involved not only a complete lack of statistics but absolutely incalculable variables as to the benefits which might be claimed under the operation of the Act.

[fol. 90] Actuarial Factors in State Unemployment Compensation Plan Prepared by Social Security Board, Washington, D. C., January, 1936

I am attaching hereto designated as "Exhibit E" a copy of a statement prepared and issued in January, 1936 by the Social Security Board of Washington, D. C. and entitled "Actuarial Factors in State Unemployment Compensation Plan (based upon standards of suggested Unemployment Compensation Bill prepared by Social Security Board, Washington, D. C., January, 1936)[1].

Industrial Activity in Alabama

I am attaching hereto designated as Exhibit F, extract from University of Alabama Business News for February 1st, 1936 and October 1st, 1936. This indicates that business activity in Alabama as shown by composite index, in August 1936 is substantially the same as in 1930.

J. Halfpenny.

Subscribed and sworn to before me this 4th day of November, 1936. Sudie S. Bates, Notary Public. (Seal.)

[fol. 91]

Table "A" to Affidavit

State of Alabama

Estimated Number of Employees Subject to the Unemployment Compensation Law Based on 1930 Census

Industries (Not exempt under Act)	A Total Employed Census of Population	B Total Employees Census of Industries	C Estimated and Reported Small Firms & Others Not Subject to Act	D Employees Subject to Act A minus C	D % of Column A
Manufacturing	150,858	133,551	27,225	123,633	81.95
Trade	81,279	87,850	25,440	55,839	68.70
Mining	34,959	33,781	1,400	33,559	95.99
Personal Service	26,710	.....	9,733	16,977	63.56
Building & Constr.	33,145	9,916	18,101	15,044	45.39
Transport & Communication	18,822	.....	7,581	11,241	59.72
Professional	10,097	.....	3,680	6,417	63.55
Forestry	5,169	.....	1,884	3,285	63.55
Miscellaneous	16,536	.....	7,356	9,180	55.51
Total	377,575	265,098	102,400	275,175	72.88

Industries (Exempted by Act)	E
Agriculture	492,818
Domestic Service	73,519
Steam Railroads & Water Transportation	26,178
Non-Profit Services	23,318
Professional Service	7,475
Public Service	10,782
Postal Service	3,846
Banking & Insurance	4,855
Miscellaneous	5,954
Total	648,745
Grand Total	1,026,320

Source: 15th Census U. S.
10/14/36

Summary:

		%
Persons gainfully employed	1,026,320	=100.00
Employees subject to Act	275,175	= 26.81
Employees non-exempt Industries	377,575	=100.00
Employees subject to Act	275,175	= 72.88

[fol. 92] TABLE "B" TO AFFIDAVIT

Total Persons Gainfully Employed in Alabama by Occupation

	1930	Percentages Alabama 1930	U.S. 1930
All Persons—			
Agriculture	492,818	48.01	21.47
Forestry and Fishing	6,064	0.59	0.55
Extraction of Minerals	34,959	3.41	2.37
Manufacturing	185,419	18.07	29.32
Transportation	57,745	5.63	9.09
Trade	86,134	8.39	15.43
Public Service	10,782	1.05	2.17
Professional Service	40,890	3.98	7.02
Domestic & Personal Service	100,229	9.77	9.85
Industry Not Specified	11,280	1.10	2.73
Total	1,026,320	100.00	100.00

Source U. S. Census
10/14/36

[fol. 93] TABLE "C" TO AFFIDAVIT

State of Alabama

Calculation of Revenue from Levies of Unemployment Compensation Law on Basis of 1930

Industry	0.9% Employer(a) 1.0% Employees(b) 1936	1.8% Employer 1.0% Employees 1937	2.7% Employers 1.0% Employees 1938
Manufacturing	1,770,124	3,150,888	4,163,673
Trade	717,591	1,277,339	1,687,913
Mines and Quarries	528,828	941,334	1,243,905
Construction	217,436	387,045	511,452
Miscellaneous	65,983	117,452	155,205
Total	3,299,962	5,874,058	7,762,148

(a) Levy for 12 months.
(b) Levy for 8 months.

Source 15th Census U. S.
10/14/36

[fol. 94]

Table "D" to Affidavit

Status of Employees in Day Rate and Salary Groups Regularly Employed from May 1st, 1936, to December 31st, 1935, and Then Becoming Totally Unemployed on January 1st, 1938, and Qualified to Receive Compensation

Showing Rate of Earnings and Contribution of Employees to Fund, Also Contribution of Employers to Fund, Together with Maximum Benefits

Occupation	Rate Per Hour	Earnings Week 40 hr.	Employees 1% to Dec. 31, '37	Company .9% '36 1.8% '37 12/31/37	Total Employee and Company	50% Wage Max. $15.00 16 Weeks	Additional Benefit 1.15 Wks.	Total
Unskilled:								
Com. Labor	.25	10.00	8.70	14.04	22.74	80.00	5.75	85.75
Occup. Lab.	.30	12.00	10.44	16.85	27.29	96.00	6.90	102.90
Gen. Helpers	.35	14.00	12.18	19.65	31.83	112.00	8.05	120.05
Semi-skilled:								
Craft Helpers	.40	16.00	13.92	22.47	36.39	128.00	9.20	137.20
Apprentices	.45	18.00	15.66	25.27	40.93	144.00	10.35	154.35
Handymen	.50	20.00	17.40	28.08	45.48	160.00	11.50	171.50
Skilled:								
Craftsmen	.55	22.00	19.14	30.89	50.03	176.00	12.65	188.65
Craftsmen	.60	24.00	20.88	33.69	54.57	192.00	13.80	205.80
Craftsmen	.65	26.00	22.62	36.51	59.13	208.00	14.95	222.95
Journeymen	.70	28.00	24.36	39.31	63.67	224.00	16.10	240.10
Journeymen	.75	30.00	26.10	42.12	68.22	240.00	17.25	257.25
Journeymen	.80	32.00	27.84	44.93	72.77	240.00	17.25	257.25
Journeymen	.90	36.00	31.32	50.56	81.88	240.00	17.25	257.25
Journeymen	1.00	40.00	34.80	56.16	90.96	240.00	17.25	257.25

Salaried:	Amount Per Year							
Salary	1,500.00	28.85	25.10	40.50	65.60	240.00	17.25	257.25
Salary	2,000.00	38.46	33.46	54.00	87.45	240.00	17.25	257.25
Salary	2,500.00	48.08	44.83	67.50	109.33	240.00	17.25	257.25
Salary	3,000.00	57.69	50.19	81.00	131.19	240.00	17.25	257.25
Salary	3,500.00	67.31	58.56	94.50	153.06	240.00	17.25	257.25
Salary	4,000.00	76.92	66.92	108.00	174.92	240.00	17.25	257.25
Salary	5,000.00	96.15	83.65	135.00	218.65	240.00	17.25	257.25
Salary	6,000.00	115.38	100.38	162.00	262.38	240.00	17.25	257.25
Salary	7,500.00	144.23	135.08	202.50	327.98	240.00	17.25	257.25
Salary	10,000.00	192.31	167.31	270.00	437.31	240.00	17.25	257.25
Salary	15,000.00	288.46	250.96	405.00	655.96	240.00	17.25	257.25
Salary	20,000.00	384.62	334.62	540.00	874.62	240.00	17.25	257.25

10/14/36

[fol. 95] EXHIBIT "E" TO AFFIDAVIT

Actuarial Factors in State Unemployment Compensation Plans (Based Upon Standards of the Suggested Unemployment Compensation Bill), Prepared by Social Security Board, Washington, D. C., January, 1936

[fol. 96] Actuarial Factors in State Unemployment Compensation Plans

Introduction

This memorandum has been prepared as an aid to the States in estimating the probable number of workers that will be covered by the Federal excise tax upon employers, the probable income that will be contributed, the possible effect of different waiting periods and of different rates of contributions, and the possible maximum duration of benefits that can be paid to the compensable labor force if the standards in the suggested State bill are followed.

With the exception of the State of Wisconsin, no State has had actual experience with unemployment compensation in this country and the Wisconsin act has been in effect too short a time to yield any actuarial experience. In lieu of such experience, it is necessary to estimate the benefits which could be paid in each State in the future under the provisions of the suggested bill. The best method of arriving at such an estimate of possible future benefits would be to assume that an unemployment compensation plan, similar to that proposed in the suggested bill, had been in effect in each State for a period of years, and then to study the hypothetical past experience as a guide to the future. Unfortunately, the dearth of State statistics on the unemployment problem makes such calculations for individual States very difficult in most instances. The only recourse when State statistics are wholly inadequate, is to estimate State behavior in terms of average figures for the United States.

The suggested State unemployment compensation bill provides that two years elapse between the initiation of collections of contributions and the initial payment of the benefits. Employment records will of course have to be instituted for administration purposes when the plan goes into effect and these records will furnish some data which

should be analyzed by each State before benefit payments are started. Such an analysis would probably indicate that corrections should be made in the estimates included herein.

[fol. 97] Coverage

The coverage of the suggested State unemployment compensation bill includes all gainful workers employed in private establishments employing eight or more employees within at least twenty weeks in a calendar year. This, of course excludes the self-employed-farmers, farm tenants, unpaid farm helpers, independent hand tradesmen, professional people, owners, proprietors, and independent operators. The following employments are also exempted from the Federal tax: (1) agricultural labor; (2) domestic service in a private home; (3) employment on vessels on navigable waters; (4) employment of family members; (5) Federal employment; (6) employment by States or political subdivisions thereof; and (7) employment by religious, charitable scientific, literary, educational, and humane nonprofit organizations. The States will probably wish to follow this coverage fairly closely.[1]

Table I shows a rough approximation of the number of gainful workers who would have been covered in April, 1930, by a plan with the Federal coverage, had one been in operation for some years.

---

[1] State and local Government employees were exempted from the Federal tax because the Federal Government cannot tax State or local governments. Employees of State and local Governments might well be covered except those on Governmental relief projects, elected or appointed public officers, government employees on an annual salary basis, and teachers in public schools, colleges, and universities. The State is also free to cover other employments exempted by the Federal tax except Federal employees and employees on vessels on navigable waters. It may also include employers of fewer than eight employees. The California, New Hampshire, New York, Utah, and Washington acts cover employers of four or more persons for thirteen or more weeks. The estimates in this memorandum, however, include only employees covered by the Federal tax.

These figures indicate the total number of workers (the employed plus the unemployed) who would have come within the scope of the plan at that date. If adjusted upward to account for natural growth of the working population, they would represent the maximum number of gainful workers who could be covered by the plan in the various State at any time.

The proportion of gainful workers that would have been covered by the plan varies considerably from State to State and from the National average, as may be seen in Table I. Massachusetts and Rhode Island would have had a maximum of about 56 per cent of their gainful workers covered in contrast to Mississippi which would have had only about 20 per cent of its workers participating in the plan. These variations exist because of differences in the industrial make-up of the States. States having a large agricultural population, for example, would have a smaller proportion covered than would States whose populations are primarily engaged in the manufacturing industries.

[fol. 98]

Table I.—Estimated Coverage of Assumed Unemployment Compensation System, by States, April 1930

State	Gainful workers		Compensable labor force	
	Total	Non-agricultural	Number	Percent of total gainful workers
		(In thousands)		
United States	48,833	38,505	22,279	45.6
Alabama	1,026	540	312	30.4
Arizona	165	127	73	44.2
Arkansas	668	283	164	24.6
California	2,501	2,189	1,267	50.7
Colorado	403	297	172	42.7
Connecticut	677	643	372	54.9
Delaware	98	81	47	47.9
District of Columbia	244	243	112	46.0
Florida	599	469	271	45.2
Georgia	1,162	660	382	32.9
Idaho	162	96	56	34.5
Illinois	3,185	2,843	1,645	51.7
Indiana	1,251	1,003	580	46.4
Iowa	913	583	337	36.9
Kansas	694	466	270	38.9
Kentucky	907	553	320	35.3
Louisiana	816	521	301	36.9
Maine	309	258	149	48.3
Maryland	673	590	341	50.7
Massachusetts	1,814	1,762	1,019	56.2
Michigan	1,927	1,691	978	50.7
Minnesota	993	691	400	40.3
Mississippi	845	294	170	20.1
Missouri	1,458	1,089	630	43.2

Table 1—Estimated Coverage of Assumed Unemployment Compensation System by States, April 1930—Continued

State	Gainful workers		Compensable labor force	
	Total	Non-agricultural	Number	Percent of total gainful workers
	(In thousands)			
Montana	216	137	79	36.5
Nebraska	507	310	179	35.3
Nevada	43	34	20	46.6
New Hampshire	193	171	99	51.4
New Jersey	1,712	1,657	959	56.0
New Mexico	143	85	49	34.3
New York	5,523	5,279	3,084	55.8
North Carolina	1,141	642	371	32.5
North Dakota	240	107	62	25.8
Ohio	2,616	2,311	1,337	51.1
Oklahoma	828	525	304	36.7
Oregon	410	329	190	46.4
Pennsylvania	3,722	3,479	2,013	54.1
Rhode Island	297	289	167	56.2
South Carolina	688	341	197	28.6
South Dakota	248	117	68	27.5
Tennessee	958	587	340	35.5
Texas	2,207	1,374	795	36.0
Utah	170	129	75	44.1
Vermont	141	103	60	42.5
Virginia	880	608	352	40.0
Washington	665	562	325	48.9
West Virginia	570	454	263	46.1
Wisconsin	1,130	841	487	43.1
Wyoming	92	62	36	38.9
			Inclusion ratio—57.86%	

[fol. 99] For a rough approximation of the number of workers in each State who will be covered by the Federal excise tax, see Table II which estimates the size of coverage under a plan assumed to have been initiated in 1933. Employment conditions have since improved somewhat and coverage would consequently be increased slightly. A plan initiated now would, of course, exclude from immediate participation the vast number of unemployed, many of whom will eventually be covered through reemployment in employments that would be covered by the plan, until the maximum estimated in Table I might be reached, or even exceeded. The speed with which this may happen depends largely upon the swiftness with which recovery takes place.

Employment and Unemployment Statistics by States

In constructing estimates for the use of the States all available statistics on unemployment and employment have been studied. Virtually no data on unemployment by States are available except those in the United States Census of

Unemployment of April, 1930, and a few scattered State or city unemployment censuses or surveys.

The compilation of employment statistics prior to 1930 was very limited. No indexes of general employment are known for these years. Several States published employment indicators of factory employees, representative of the manufacturing industries only, but most of these do not go back beyond the 1920's.

[fol. 100] TABLE II.—Estimated Number of Employed Workers Covered by States, 1933

State	Number of employed Workers covered
United States	14,611,000
Alabama	204,000
Arizona	46,000
Arkansas	89,000
California	900,000
Colorado	109,000
Connecticut	254,000
Delaware	38,000
District of Columbia	110,000
Florida	171,000
Georgia	303,000
Idaho	38,000
Illinois	1,048,000
Indiana	375,000
Iowa	221,000
Kansas	190,000
Kentucky	229,000
Louisiana	202,000
Maine	116,000
Maryland	237,000
Massachusetts	658,000
Michigan	531,000
Minnesota	269,000
Mississippi	107,000
Missouri	419,000
Montana	47,000
Nebraska	120,000
Nevada	12,000
New Hampshire	76,000

State	Number of employed workers covered
New Jersey	591,000
New Mexico	29,000
New York	1,892,000
North Carolina	291,000
North Dakota	42,000
Ohio	894,000
Oklahoma	207,000
Oregon	148,000
Pennsylvania	1,215,000
Rhode Island	106,000
South Carolina	155,000
South Dakota	49,000
Tennessee	244,000
Texas	531,000
Utah	48,000
Vermont	40,000
Virginia	246,000
Washington	222,000
West Virginia	182,000
Wisconsin	335,000
Wyoming	23,000

[fol. 101] During the last four or five years more complete and reliable employment statistics have been gathered. Not only have States recognized the need for such data, but the United States Bureau of Labor Statistics has been compiling National employment indexes month by month, since 1929, for the following industrial groups: manufacturing, wholesale trade, retail trade, mining, transportation, telephone and telegraph, light and power, and hotels. In 1933 the scope of the field covered was enlarged by the addition of real estate, banking, insurance, and canning and preserving industries. Since 1932 these indexes have been broken down by States, resulting in the first comprehensive monthly State indicators of employment.

(Here follow two photos, side folios 102 and 103.)

TABLE [illegible] -- ESTIMATES OF THE COMPENSABLE LABOR FORCE, 1930-1933, BY STATES

State	Average number of workers in compensable labor force				Average number employed (In thousands)				Average number unemployed				1930-3
	1930	1931	1932	1933	1930	1931	1932	1933	1930	1931	1932	1933	
United States	22,979	22,319	22,317	22,416	19,104	16,768	14,248	14,611	3,175	5,551	8,069	7,805	72.5
Alabama	312	306	300	295	273	238	194	204	39	68	106	91	74.9
Arizona	73	73	75	76	63	54	47	46	10	19	28	30	70.7
Arkansas	166	160	153	149	145	127	94	89	19	33	58	60	73.7
California	1,387	1,299	1,288	1,303	1,080	950	881	900	287	329	401	403	74.2
Colorado	172	170	171	172	148	131	112	109	24	39	59	63	73.8
Connecticut	392	375	377	380	319	277	230	254	55	98	147	126	71.8
Delaware	47	47	46	47	42	36	33	38	5	11	13	9	79.7
District of Columbia	113	113	113	114	100	90	81	88	13	23	32	26	79.4
Florida	271	273	276	277	233	205	170	171	38	68	104	106	71.1
Georgia	382	371	366	356	339	298	256	303	43	73	110	53	80.9
Idaho	56	54	54	54	49	42	37	38	7	12	17	16	76.2
Illinois	1,445	1,655	1,661	1,670	1,383	1,215	1,014	1,048	262	440	647	622	70.3
Indiana	580	581	577	577	496	433	353	375	86	148	234	203	71.6
Iowa	337	335	332	329	301	266	228	221	36	69	104	108	76.2
Kansas	270	268	267	266	238	210	187	190	32	58	80	76	77.0
Kentucky	320	314	308	308	276	243	215	229	44	71	93	79	77.3
Louisiana	301	301	298	298	261	238	196	202	40	73	102	96	74.0
Maine	149	149	149	149	128	112	99	116	21	37	50	33	78.3
Maryland	341	343	343	344	301	318	234	237	40	26	119	107	73.8
Massachusetts	1,019	1,028	1,030	1,034	866	753	654	658	155	275	376	378	71.3
Michigan	978	989	998	1,008	783	679	553	531	195	310	443	475	64.1
Minnesota	600	599	597	598	545	503	272	269	55	96	125	127	74.7
Mississippi	190	181	153	147	150	132	108	107	30	29	45	40	78.8
Missouri	630	630	627	627	547	481	413	419	83	149	214	208	74.0
Montana	79	78	77	78	67	58	45	47	12	18	32	29	70.5
Nebraska	179	179	179	178	160	142	125	120	19	37	54	58	76.7
Nevada	20	20	20	20	16	14	12	12	4	6	8	8	67.5
New Hampshire	99	100	100	100	85	73	68	76	14	27	33	24	75.7
New Jersey	959	970	980	990	812	735	602	591	147	235	378	399	69.5
New Mexico	49	48	48	48	43	37	31	29	6	11	18	20	71.8
New York	3,084	3,111	3,134	3,159	2,635	2,312	1,950	1,915	449	799	1,184	1,244	70.6
North Carolina	371	369	366	364	320	278	242	291	51	91	124	75	76.8
North Dakota	62	61	59	59	55	49	45	42	7	12	14	17	79.3
Ohio	1,337	1,345	1,346	1,352	1,131	987	824	894	206	358	522	458	71.3
Oklahoma	304	303	300	299	263	227	195	207	41	75	105	92	74.0
Oregon	190	192	193	193	161	142	136	148	29	50	56	45	78.5
Pennsylvania	2,013	2,021	2,028	2,080	1,731	1,509	1,242	1,216	282	512	786	864	70.0
Rhode Island	167	169	170	171	138	120	100	106	29	49	70	65	68.5
South Carolina	197	192	187	183	176	153	129	155	21	44	58	28	80.6
South Dakota	68	67	66	65	62	55	48	49	6	12	17	16	80.8
Tennessee	340	334	329	324	299	282	235	244	41	92	104	80	77.6
Texas	795	798	793	798	698	612	521	531	97	186	271	265	74.2
Utah	75	74	73	73	64	56	46	46	11	18	26	27	72.6
Vermont	60	60	59	59	51	45	40	40	9	15	19	19	71.8
Virginia	353	347	343	339	312	273	231	244	40	74	111	95	76.8
Washington	325	327	327	329	279	245	219	222	46	82	107	107	73.5
West Virginia	293	283	283	284	230	202	174	183	33	61	89	83	74.8
Wisconsin	487	487	484	482	420	366	330	335	67	121	154	147	74.5
Wyoming	36	35	36	36	32	28	23	23	4	7	13	13	74.1

III... ESTIMATES OF THE COMPENSABLE LABOR FORCE, 1930-1933, BY STATES

Average number employed (In thousands)				Average number unemployed				Percent of compensable labor force									
								Salary					Wage				
1930	1931	1932	1933	1930	1931	1932	1933	1930-33	1930	1931	1932	1933	1930-33	1930	1931	1932	1933
19,104	16,768	14,248	14,611	3,175	5,551	8,049	7,805	12.5	85.7	75.1	63.8	66.3	27.5	14.3	24.9	36.2	34.8
273	238	196	204	39	68	106	91	24.9	87.5	77.8	66.7	69.8	25.1	12.5	22.2	33.3	30.8
63	54	47	46	10	19	28	30	30.7	84.3	74.8	62.7	60.5	29.3	15.7	26.0	37.3	39.5
145	129	96	89	19	33	58	60	22.7	88.4	79.4	61.4	59.7	27.3	11.6	20.6	38.6	40.3
1,080	950	881	900	187	329	401	403	24.2	85.2	74.3	68.4	69.1	25.8	14.8	25.7	31.6	30.9
148	131	112	109	26	39	59	63	23.0	86.0	77.1	65.5	63.4	27.0	14.0	22.9	34.5	36.6
319	277	230	234	53	98	149	126	21.8	85.8	73.9	61.0	64.8	28.2	14.2	26.1	29.6	13.2
42	36	33	38	5	11	13	9	29.7	88.4	78.3	71.7	80.0	28.3	10.6	21.6	28.3	19.1
100	90	81	88	13	23	32	26	29.4	89.3	79.6	71.7	77.3	28.6	10.7	20.4	28.3	22.7
233	205	170	171	38	68	106	108	31.1	86.8	73.1	62.0	61.7	28.9	14.0	26.9	38.0	38.3
339	296	256	303	43	75	110	53	20.9	88.7	79.8	69.9	85.1	29.1	11.3	20.2	30.1	14.9
69	62	37	38	7	12	17	16	23.8	87.5	77.8	68.5	70.4	23.8	12.5	22.2	31.5	29.6
1,383	1,215	1,014	1,048	263	440	647	622	30.3	84.1	73.4	61.0	62.8	29.7	15.9	26.6	39.0	37.2
496	433	353	375	84	148	224	203	31.6	85.5	74.5	61.5	65.0	28.4	14.5	25.5	38.5	35.0
301	266	228	221	36	69	104	108	26.2	88.2	78.4	68.7	67.2	23.8	10.7	20.8	31.3	32.8
238	210	187	190	32	58	80	76	27.0	88.1	78.4	70.0	71.4	23.8	11.9	21.6	30.0	28.6
276	243	215	229	44	71	93	79	27.3	86.3	77.4	69.8	74.4	23.7	13.7	22.6	30.2	25.6
361	228	196	202	40	73	102	98	26.0	86.7	75.7	65.8	67.8	26.6	13.3	24.3	34.2	32.2
138	112	99	116	21	37	50	33	26.3	83.8	73.2	66.4	77.8	23.7	16.1	26.8	33.6	22.2
301	318	224	237	40	24	119	107	28.8	88.3	93.0	65.3	68.9	21.8	11.7	7.0	34.7	31.1
866	753	656	658	155	273	376	376	31.3	84.8	73.6	63.5	63.8	28.7	15.2	26.6	36.5	36.2
783	679	553	531	195	310	443	473	34.1	80.1	68.7	56.5	52.8	33.8	19.9	31.3	44.5	47.2
345	303	272	269	55	96	125	127	24.7	84.3	73.9	68.5	67.9	25.3	13.7	26.1	31.5	32.1
150	132	108	107	30	29	45	40	28.8	88.2	82.0	70.6	72.8	21.2	11.8	18.0	29.4	27.2
549	461	413	419	83	149	214	208	24.0	84.8	78.3	65.9	66.8	26.0	15.2	21.7	34.1	33.2
69	58	45	49	13	18	32	29	30.5	84.8	78.3	58.4	61.8	29.5	15.2	21.7	41.6	38.2
160	142	125	120	19	37	54	56	26.7	89.4	79.3	69.8	68.2	23.3	10.6	20.7	30.2	31.8
16	14	12	13	4	6	8	8	27.5	80.0	70.0	60.0	60.0	32.5	20.0	30.0	40.0	40.0
85	73	68	76	14	27	32	26	25.7	85.9	73.0	68.8	76.0	24.3	14.1	27.0	31.2	23.8
812	735	602	591	147	265	378	399	29.5	84.7	72.7	61.6	59.7	30.5	15.3	27.3	38.4	40.3
43	37	31	29	6	11	18	20	31.8	87.8	77.1	63.3	58.3	28.2	12.2	22.9	36.7	40.8
2,635	2,312	1,950	1,915	649	799	1,184	1,264	29.6	83.4	74.3	63.2	60.6	29.6	16.6	25.7	37.2	39.4
320	278	242	291	51	91	126	95	26.5	86.3	75.3	64.1	75.5	23.2	13.7	24.7	33.8	24.5
85	69	65	62	7	12	14	17	23.3	88.7	80.3	78.3	71.2	26.7	11.3	19.7	23.7	28.8
1,131	987	824	894	206	358	522	458	31.3	84.6	73.4	61.8	66.1	28.7	15.4	26.6	38.2	33.9
263	229	195	207	41	75	105	92	26.0	86.5	74.9	65.0	69.2	26.0	13.5	25.1	35.0	30.8
161	142	136	148	28	51	56	45	21.5	84.7	74.0	70.8	76.7	23.5	15.3	26.0	29.2	23.3
1,731	1,509	1,242	1,216	283	513	786	864	33.2	86.0	74.7	61.2	58.5	30.0	14.0	25.3	38.8	41.5
138	120	100	108	29	49	70	65	30.6	82.6	71.0	58.8	63.0	31.3	17.4	29.0	41.2	36.9
176	153	129	155	31	44	58	28	19.2	89.3	79.2	69.0	84.7	18.4	10.7	20.8	31.0	15.3
62	55	48	49	8	12	17	16	26.8	88.8	91.2	82.1	74.2	19.2	8.8	17.9	25.8	26.6
259	242	225	244	41	72	104	80	30.7	87.9	78.4	68.4	73.2	22.4	12.1	21.6	31.6	26.7
698	613	531	531	97	166	241	265	34.1	87.8	76.7	65.7	66.7	26.8	12.2	23.3	34.3	33.3
64	56	49	48	11	18	26	27	29.6	85.3	75.7	65.3	64.0	27.4	14.7	24.3	34.7	36.0
51	45	40	40	9	15	19	19	27.8	85.0	75.8	67.8	67.8	28.1	15.0	25.4	32.2	32.2
312	273	231	246	60	74	114	93	28.9	88.6	78.7	67.3	73.8	23.1	11.4	21.3	32.7	27.6
279	245	219	222	46	82	109	107	33.8	85.8	76.9	67.0	67.5	26.2	14.2	23.1	33.0	32.5
230	202	174	183	33	61	89	82	34.8	87.8	78.8	68.2	68.9	25.2	12.2	21.2	31.8	31.1
420	366	320	335	67	121	164	147	34.3	86.2	73.2	66.1	69.5	25.7	13.8	26.8	33.9	30.5
32	28	23	23	4	7	13	13	34.1	88.9	80.0	63.9	63.9	25.9	11.1	20.0	34.6	36.1

TABLE VI. STATES RANKED BY AVERAGE PERCENTAGE OF UNEMPLOYMENT WITHIN THE COMPENSABLE LABOR FORCE, APRIL 1930; 1933 AVERAGE; AND 1930-1933 AVERAGE 1/

State	April 1930 Percent of compensable labor force unemployed	April 1930 Ratio to average of all States (percent)	State	1933 Average Percent of compensable labor force unemployed	1933 Average Ratio to average of all States (percent)	State	19
United States - -	14.3	100.0	United States - - - - -	34.8	100.0	United States - - - -	
1. Nevada - - - - - -	20.0	139.8	1. Michigan - - - - - - -	47.2	135.6	1. Michigan - - - - - -	
2. Michigan - - - - -	19.9	139.2	2. Pennsylvania - - - - -	41.5	119.3	2. Nevada - - - - - - -	
3. Rhode Island - - -	17.4	121.7	3. New Mexico - - - - - -	40.8	117.2	3. Rhode Island - - - -	
4. Illinois - - - - -	15.9	111.2	4. New Jersey - - - - - -	40.3	115.8	4. New Jersey - - - - -	
5. Ohio - - - - - - -	15.4	107.7	5. Arkansas - - - - - - -	40.3	115.8	5. Pennsylvania - - - -	
6. Oregon - - - - - -	15.3	107.0	6. Nevada - - - - - - - -	40.0	114.9	6. Illinois - - - - - -	
7. New Jersey - - - -	15.3	107.0	7. New York - - - - - - -	39.5	113.5	7. Montana- - - - - - -	
8. Massachusetts- - -	15.2	106.2	8. Arizona- - - - - - - -	39.5	113.5	8. New York - - - - - -	
9. Montana- - - - - -	15.2	106.2	9. Florida- - - - - - - -	38.3	110.1	9. Arizona- - - - - - -	
10. Vermont- - - - - -	15.0	104.9	10. Montana- - - - - - - -	38.2	109.8	10. Florida- - - - - - -	
11. California - - - -	14.8	103.5	11. Rhode Island - - - - -	38.0	109.2	11. Ohio - - - - - - - -	
12. Utah - - - - - - -	14.7	102.8	12. Illinois - - - - - - -	37.2	106.9	12. Massachusetts- - - -	
13. New York - - - - -	14.6	102.1	13. Colorado - - - - - - -	36.8	105.2	13. Indiana- - - - - - -	
14. Indiana- - - - - -	14.5	101.4	14. Massachusetts- - - - -	36.4	104.6	14. Connecticut- - - - -	
15. Washington - - - -	14.2	99.3	15. Wyoming - - - - - - -	36.1	103.7	15. New Mexico - - - - -	
16. Connecticut- - - -	14.2	99.3	16. Utah - - - - - - - - -	36.0	103.4	16. Utah - - - - - - - -	
17. Maine- - - - - - -	14.1	98.6	17. Indiana- - - - - - - -	35.0	100.6	17. Arkansas - - - - - -	
18. New Hampshire- - -	14.1	98.6	18. Ohio - - - - - - - - -	33.9	97.4	18. Colorado - - - - - -	
19. Florida- - - - - -	14.0	97.9	19. Texas- - - - - - - - -	33.3	95.7	19. Washington - - - - -	
20. Colorado - - - - -	14.0	97.9	20. Missouri - - - - - - -	33.2	95.4	20. Vermont- - - - - - -	
21. Pennsylvania - - -	14.0	97.9	21. Connecticut- - - - - -	33.2	95.4	21. Oklahoma 0 - - - - -	
22. Wisconsin- - - - -	13.8	96.5	22. Iowa - - - - - - - - -	32.8	94.3	22. Missouri - - - - - -	
23. North Carolina - -	13.7	95.8	23. Washington - - - - - -	32.5	93.4	23. Louisiana- - - - - -	
24. Minnesota- - - - -	13.7	95.8	24. Louisiana- - - - - - -	32.2	92.5	24. Wyoming- - - - - - -	
25. Kentucky - - - - -	13.7	95.8	25. Vermont- - - - - - - -	32.2	92.5	25. California - - - - -	
26. Arizona- - - - - -	13.7	95.8	26. Minnesota- - - - - - -	32.1	92.2	26. Texas- - - - - - - -	
27. Oklahoma - - - - -	13.5	94.4	27. Nebraska - - - - - - -	31.8	91.4	27. Wisconsin- - - - - -	
28. Louisiana- - - - -	13.3	93.0	28. West Virginia- - - - -	31.1	89.4	28. Minnesota- - - - - -	
29. Missouri - - - - -	13.2	92.3	29. Maryland - - - - - - -	31.1	89.4	29. West Virginia- - - -	
30. Alabama - - - - -	12.5	87.4	30. California - - - - - -	30.9	88.8	30. Alabama- - - - - - -	
31. Idaho - - - - - -	12.5	87.4	31. Alabama - - - - - - -	30.8	88.5	31. New Hampshire - - -	
32. West Virginia - -	12.5	87.4	32. Oklahoma- - - - - - -	30.8	88.5	32. Iowa - - - - - - - -	
33. New Mexico- - - -	12.2	85.3	33. Wisconsin - - - - - -	30.5	87.6	33. Idaho- - - - - - - -	
34. Texas - - - - - -	12.2	85.3	34. Idaho - - - - - - - -	29.6	85.1	34. Maine- - - - - - - -	
35. Tennessee - - - -	12.1	84.6	35. North Dakota- - - - -	28.8	82.8	35. Oregon - - - - - - -	
36. Kansas- - - - - -	11.9	83.2	36. Kansas - - - - - - - -	28.6	82.2	36. Nebraska - - - - - -	
37. Mississippi - - -	11.8	82.5	37. Virginia- - - - - - -	27.4	78.7	37. North Carolina - - -	
38. Maryland- - - - -	11.7	81.8	38. Mississippi - - - - -	27.2	78.2	38. Virginia - - - - - -	
39. Arkansas- - - - -	11.6	81.1	39. Kentucky- - - - - - -	25.6	73.5	39. Kansas - - - - - - -	
40. Virginia- - - - -	11.4	79.7	40. Tennessee - - - - - -	24.7	71.0	40. Kentucky - - - - - -	
41. Georgia - - - - -	11.3	79.0	41. South Dakota- - - - -	24.6	70.7	41. Tennessee- - - - - -	
42. North Dakota- - -	11.3	79.0	42. Oregon- - - - - - - -	23.3	67.0	42. Mississippi- - - - -	
43. Wyoming - - - - -	11.1	77.6	43. District of Columbia-	23.1	66.4	43. Maryland - - - - - -	
44. Iowa- - - - - - -	10.7	74.8	44. New Hampshire - - - -	23.0	66.1	44. North Dakota - - - -	
45. South Carolina- -	10.7	74.8	45. Maine - - - - - - - -	22.1	63.5	45. District of Columbia	
46. Nebraska- - - - -	10.6	74.1	46. North Carolina- - - -	22.05	58.9	46. Delaware - - - - - -	
47. Delaware- - - - -	10.6	74.1	47. Delaware- - - - - - -	19.1	54.9	47. South Carolina - - -	
48. District of Columbia	10.6	74.1	48. South Carolina- - - -	15.3	44.0	48. South Dakota - - - -	
49. South Dakota- - -	8.8	61.5	49. Georgia - - - - - - -	14.9	42.8	49. Georgia- - - - - - -	

1/ Estimates derived from population and employment data reported by the United States Bureau of Agricultural Economics, and the United States Bureau of Labor Statistics.

TABLE VI. STATES ARRANGED BY AVERAGE PERCENTAGE OF UNEMPLOYMENT WITHIN THE COMPENSABLE LABOR FORCE, APRIL 1930; 1933 AVERAGE; AND 1930-1933 AVERAGE

State	1933 Average: Percent of compensable labor force unemployed	1933 Average: Ratio to average of all States (percent)	State	1930-1933 average: Percent of compensable labor force unemployed	1930-1933 average: Ratio to average of all States (percent)
United States	34.8	100.0	United States	27.5	100.0
1. Michigan	47.2	135.6	1. Michigan	35.9	130.5
2. Pennsylvania	41.5	119.2	2. Nevada	32.5	118.2
3. New Mexico	40.8	117.2	3. Rhode Island	31.5	114.5
4. New Jersey	40.3	115.8	4. New Jersey	30.5	110.9
5. Arkansas	40.3	115.8	5. Pennsylvania	30.0	109.1
6. Nevada	40.0	114.9	6. Illinois	29.7	108.0
7. New York	39.5	113.5	7. Montana	29.5	107.3
8. Arizona	39.5	113.5	8. New York	29.5	107.3
9. Florida	38.3	110.1	9. Arizona	29.3	106.5
10. Montana	38.2	109.8	10. Florida	28.9	105.1
11. Rhode Island	38.0	109.2	11. Ohio	28.7	104.4
12. Illinois	37.2	106.9	12. Massachusetts	28.7	104.4
13. Colorado	36.6	105.2	13. Indiana	28.4	103.3
14. Massachusetts	36.4	104.6	14. Connecticut	28.2	102.5
15. Wyoming	36.1	103.7	15. New Mexico	28.2	102.5
16. Utah	36.0	103.4	16. Utah	27.4	99.6
17. Indiana	35.0	100.6	17. Arkansas	27.3	99.3
18. Ohio	33.8	97.4	18. Colorado	27.0	98.2
19. Texas	33.3	95.7	19. Washington	26.2	95.3
20. Missouri	33.2	95.4	20. Vermont	26.1	94.9
21. Connecticut	33.2	95.4	21. Oklahoma	26.0	94.5
22. Iowa	32.8	94.3	22. Missouri	26.0	94.5
23. Washington	32.5	93.4	23. Louisiana	26.0	94.5
24. Louisiana	32.2	92.5	24. Wyoming	25.9	94.2
25. Vermont	32.2	92.5	25. California	25.8	93.8
26. Minnesota	32.1	92.2	26. Texas	25.8	93.8
27. Nebraska	31.8	91.4	27. Wisconsin	25.7	93.5
28. West Virginia	31.1	89.4	28. Minnesota	25.3	92.0
29. Maryland	31.1	89.4	29. West Virginia	25.2	91.6
30. California	30.9	88.8	30. Alabama	25.1	91.3
31. Alabama	30.8	88.5	31. New Hampshire	24.3	88.4
32. Oklahoma	30.8	88.5	32. Iowa	23.8	86.5
33. Wisconsin	30.2	87.6	33. Idaho	23.8	86.5
34. Idaho	29.6	85.1	34. Maine	23.7	86.2
35. North Dakota	28.8	82.8	35. Oregon	23.5	85.5
36. Kansas	28.6	82.2	36. Nebraska	23.3	84.7
37. Virginia	27.4	78.7	37. North Carolina	23.2	84.4
38. Mississippi	27.3	78.2	38. Virginia	23.1	84.0
39. Kentucky	25.6	73.5	39. Kansas	22.0	83.8
40. Tennessee	24.7	71.0	40. Kentucky	22.7	82.5
41. South Dakota	24.6	70.7	41. Tennessee	22.4	81.5
42. Oregon	23.3	67.0	42. Mississippi	21.3	77.1
43. District of Columbia	23.1	66.4	43. Maryland	21.2	77.1
44. New Hampshire	23.0	66.1	44. North Dakota	20.7	75.3
45. Maine	22.1	63.5	45. District of Columbia	20.6	74.9
46. North Carolina	22.05	58.9	46. Delaware	20.3	73.8
47. Delaware	19.1	54.9	47. South Carolina	19.4	70.5
48. South Carolina	15.3	44.0	48. South Dakota	19.2	69.8
49. Georgia	14.9	42.8	49. Georgia	19.1	69.5

reported by the United States Bureau of Agricultural Economics, and the United States Bureau of Labor Statistics.

Utilizing the Bureau of Labor Statistics indexes and the United States Censuses of Occupations and Unemployment of April, 1930, estimates have been made of the yearly average employment and unemployment within the compensable labor force by States for each year, 1930 through 1933, the results of which are shown in Table III. The dependability of these estimates is subject to question, at least for part of the period, because the data upon which they were based are inadequate and also because the limited time available for study necessitated the use of unrefined statistical methods. Several checks with other information indicate, however, that these estimates are at least fair approximations of what probably existed. They may therefore be used as a guide in the absence of better data.

More accurate indicators could probably be obtained from the statistical treatment of city surveys of unemployment where such are available, or from an examination of actual employment records within a State.

Variation in Unemployment Between States

According to Table III the degree of unemployment varies widely from State to State. Table IV in which the States are arrayed according to the estimated percentage of the [fol. 104] compensable labor force unemployed in April, 1930, shows a range from approximately 20 per cent in Nevada, to about 8.8 per cent in South Dakota; the 1933 average indicates a high in Michigan over three times as great as the low in Georgia. However, as the period of observation is lengthened the range of variations between States seems to decrease. This conclusion is supported by the 1930-1933 average in which the peak of 35.9 per cent unemployed in Michigan is less than twice as large as the low of 19.1 per cent in Georgia.

From Table IV a comparison may also be made between the percentage unemployed in each State and the percentage unemployed in the United States as a whole. When the ratio of the unemployed in a State to the average of all States is considered, the range in deviations from the National average is from 61.5 per cent to 139.9 per cent for April, 1930; from 42.8 per cent to 135.6 per cent for 1933, but only from 69.5 per cent to 130.5 per cent for the four-year period 1930-1933. It seems probable, therefore, that if the period of observation were extended to ten years or more, the sev-

ral States might show even less variations and even smaller deviations from the National average.

It should be recognized that the number unemployed is not the only factor conditioning the behavior of an unemployment compensation plan; the length of time that the unemployed have been idle is an important conditioning factor also, and one which will vary somewhat from State to State according to the industrial and economic characteristics of the area. If there is a continuous turnover of labor so that large numbers of the labor force are without work for relatively short periods only, the drain on the unemployment compensation funds will be much greater than if the area includes large stranded populations subject to chronic unemployment. How much allowance should be made for such factors is almost impossible to estimate before State experience has been accumulated, and adjustments may become necessary as data are gathered under the operation of the plan.

[fol. 105] Income from Contributions

The funds for State unemployment compensation systems under the suggested bill are to be raised by a 3-per cent contribution based upon the payrolls of those employed in the covered employments.

Table V shows a rough approximation of the total income that would have been collected in 1933 by such a levy within each State had a plan been in operation for some time. If business conditions continue to improve, the income by 1938, when the full 3-per cent Federal tax becomes operative, will be substantially higher.

State incomes under the plan will vary year by year according to fluctuations in the number of covered persons employed as well as in their wages. Both factors will have an important bearing on the total amount raised. Tracing the estimated income through the years 1922-1933 for the United States as a whole, a peak in yearly amounts collected appeared in 1929 which was about 80 percent greater than the low reached in 1933. Since low rates of pay tend to go hand-in-hand with high rates of unemployment, the years when incomes raised are smallest will also be the years when the number of unemployed eligible for benefits is greatest. And, unless reserves have been accumulated during less adverse times to meet depression emergencies,

drastic measures will have to be taken to maintain a system on a solvent basis.

Benefits

The scarcity of data on employment and unemployment statistics by States makes it impossible to calculate accurately the amount and duration of benefits which can be allowed within each State. Estimates for the United States as a whole have been utilized and such estimates may be roughly adjusted for individual States according to the variation in their unemployment experience from the average in the United States.

[fol. 106]

Table V.—Estimated Wages and Salaries of Compensable Labor Force and Income from a Three Per Cent Contribution, by States, 1933

State	Total wages and salaries of gainful workers, 1929 (In Millions)	Wages and salaries of total compensable labor force (In millions)		Three per cent contributions for total compensable labor force,
		1929	1933	1933
United States	$59,797	$33,785	$17,602	$528,060,000
Alabama	589	333	173	5,190,000
Arizona	209	118	61	1,830,000
Arkansas	320	181	94	2,820,000
California	3,738	2,112	1,100	33,000,000
Colorado	445	251	131	3,930,000
Connecticut	995	562	293	8,790,000
Delaware	122	69	36	1,080,000
District of Columbia	400	226	118	3,540,000
Florida	528	298	155	4,650,000
Georgia	654	370	193	5,790,000
Idaho	147	83	43	1,290,000
Illinois	5,024	2,839	1,479	44,370,000
Indiana	1,512	854	445	13,350,000
Iowa	819	463	241	7,230,000
Kansas	658	372	194	5,820,000
Kentucky	689	389	203	6,090,000
Louisiana	622	351	183	5,490,000
Maine	326	184	96	2,880,000
Maryland	800	452	235	7,050,000
Massachusetts	2,709	1,531	798	23,940,000
Michigan	3,000	1,695	883	26,490,000
Minnesota	1,032	583	304	9,120,000
Mississippi	300	170	89	2,670,000
Missouri	1,614	912	475	14,250,000
Montana	237	134	70	2,100,000
Nebraska	449	254	132	3,960,000
Nevada	61	34	18	540,000
New Hampshire	217	123	64	1,920,000
New Jersey	2,752	1,555	810	24,300,000
New Mexico	120	68	35	1,050,000
New York	9,906	5,596	2,915	87,450,000
North Carolina	632	357	186	5,580,000
North Dakota	153	86	45	1,350,000

Table V.—Estimated Wages and Salaries of Compensable Labor Force and Income from a Three Per Cent Contribution, by States, 1933—Continued

State	Total wages and salaries of gainful workers, 1929 (In Millions)	Wages and salaries of total compensable labor force (In millions)		Three per cent contributions for total compensable labor force,
		1929	1933	1933
Ohio	3,855	2,178	1,135	34,050,000
Oklahoma	748	423	220	6,600,000
Oregon	492	278	145	4,350,000
Pennsylvania	5,481	3,096	1,613	48,390,000
Rhode Island	404	228	119	3,570,000
South Carolina	300	170	89	2,670,000
South Dakota	161	91	47	1,410,000
Tennessee	676	382	199	5,970,000
Texas	1,855	1,048	546	16,380,000
Utah	203	115	60	1,800,000
Vermont	145	82	43	1,290,000
Virginia	733	414	216	6,480,000
Washington	891	503	262	7,860,000
West Virginia	657	371	193	5,790,000
Wisconsin	1,309	740	386	11,580,000
Wyoming	108	61	32	960,000

[1] Leven, Moulton, and Warburton "America's Capacity to Consume"; Brookings Institution, Washington, D. C., 1934; pp. 175, table 19 (Income from Occupation).

[2] Index—0.565—$\frac{\text{Employed Compensable Labor Force for U. S.}}{\text{Total Employed Gainful Workers for U. S.}}$

[3] Index—0.521—$\frac{\text{Total Assessable Payroll, 1933}}{\text{Total Assessable Payroll, 1929}}$

[fol. 107] On the basis of the extent and duration of unemployment in the compensable labor force of the United States as a whole during 1922-1933, it has been estimated that sufficient funds would be collected from a 3 per cent tax upon payrolls to pay benefits equal to 50 per cent of wages for 11 weeks with a three-week waiting period and for 12 weeks with a four-week waiting period.

If over a period of time the rate of unemployment in an individual State tends to approximate the rate for the Nation as a whole, there is some justification for using the National figure to obtain preliminary estimates of the possible behavior of State unemployment compensation systems over a period of years. However, if the average rate of unemployment for a State during 1930-1933 is estimated as higher than that for the United States during those years, the benefit period provided by the State law should be shorter than the National estimate would permit; on the other hand, if the unemployment rate for a State is lower than for the United States, conservatism suggests that the

benefit period be kept equal to those permissable according to National statistics, rather than being increased.

The suggested bill proposes: (1) a rate of weekly benefits of 50 per cent of full-time wages, not to exceed a $15 maximum; (2) compensation of partial unemployment only to the extent that an employee's wages and benefits combined will not exceed two dollars more than the weekly benefit to which he would be entitled if totally unemployed; (3) a ratio of 1 week of benefits to every 4 weeks of employment; (4) certain disqualifications or penalties for unemployment caused by trade disputes, voluntary quitting, or discharge for misconduct; and other minor provisions all of which affect the maximum number of weekly benefits that may be paid in any year to an unemployed worker. Even if the above provisions are not changed, the maximum duration of benefits that may be provided is still contingent on what decision is reached as to (1) the contribution rate imposed, and (2) the length of the waiting period required. Since these are questions on which there may be greater differ-
[fol. 108] ences of opinion than on the other provisions of the suggested State bill, the section which follows discusses the effect that different decisions will have in terms of the maximum durations of benefits payable.

Effect of Variations in Contribution Rates on Duration of Benefits

In order to provide longer durations of benefit than those indicated as possible with a 3 per cent contribution, it may seem desirable to some State legislatures to increase the rate of contribution above the Federal excise tax (either by increasing the employer's rate, by requiring employee contributions, or by providing for a contribution by the State). With a three-week waiting period, the 3 per cent contribution would roughly have permitted the payment of 11 weeks of benefit for the United States as a whole, whereas on the same assumptions, a 4 per cent contribution rate would have increased the duration of benefits to about 17 weeks, and a 5 per cent contribution would have made possible the payment of about 24 weeks of benefits. Thus the increase in the length of benefits is greater in proportion than the increase in the contribution rate. This is explained by the distribution of the unemployed according to

the duration of their unemployment taken from surveys or censuses of unemployment, which show that a larger proportion of the idle are unemployed for short periods of time than for long periods. For example, on the basis of records of about 5,000,000 unemployed, 21 per cent were unemployed 4 weeks or less, 13 per cent were unemployed 5 to 8 weeks, while only 5 per cent were unemployed from 17 to 20 weeks. Consequently, as the duration of benefits is increased each additional week added will require a proportionately smaller addition to the rate of contributions necessary to finance the benefits.

An additional 1 or 2 per cent contribution will therefore make possible an extension of benefits to a duration that will more adequately protect the unemployed against long periods of unemployment. The estimated effect of a higher rate of contributions on the maximum duration of benefits that each State can pay (with variable waiting periods) is shown in Table VI.

[fol. 109] Effect of the Waiting Period on the Duration of Benefits

As previously stated, the cost of compensating the earlier weeks of unemployment is greater than compensating the later weeks. It follows therefore that the length of the waiting period has a considerable effect upon the duration of benefits. According to actuarial estimates for the United States as a whole, a change of one week either way from a three-week waiting period would result in a corresponding change of one to three weeks in the length of benefits permissible.

Effect of Two Solvency Bases on Duration of Benefits

An unemployment compensation system may, of course, be designed to provide benefits only during periods of normal rates of unemployment and minor depressions. The total contributions received by the unemployment fund may in this event be used to increase the duration of benefits. This will leave the relief of unemployment during major depressions to be met from other funds, or will require Government support of the unemployment compensation fund. For example, the income received by a hypothetical pooled fund for the entire United States is estimated as $6,972,000,000 from 1922 through 1930 and as $8,746,000,000

from 1922 through 1933 at the same rate of contribution, 3 per cent of payrolls. These amounts represent the estimated totals available for benefits during the years in which the funds were collected. Since unemployment was very severe during 1931, 1932, and 1933, the income of the fund would have been greatly reduced at the same time that expenditures for benefits would have been increased. Obviously the fund would not remain solvent unless the duration or amounts of benefits were reduced. The tabulation below shows the maximum possible duration of benefits with identical waiting periods, on two bases of solvency, paying out the entire income of the fund as benefits: A from 1922 through 1930 and B from 1922 through 1933.

[fol. 110]

Waiting period	Maximum possible duration of benefits from 3-per cent contributions	
	A[1] (1922-1930)	B[2] (1922-1933)
2 weeks	17	10
3 weeks	19	11
4 weeks	22	12

[1] A assumes that the entire income received from contributions within the period 1922-1930, inclusive, is expended for benefits within the period.

[2] B assumes that the expenditures for benefits during 1922-1930, inclusive, are kept conservative in order to meet the emergency of the depression years 1931-1933, when income falls and expenditures increase.

[fol. 111]

Summary

After a decision has been reached as to the contribution rate to be imposed and the length of the waiting period to be required, the maximum duration of benefits that can be provided may be determined. (Of course, decision as to these other factors will also be influenced by the effect each of them has on the duration of benefits.)

Table VI has been prepared to indicate the maximum duration of benefits which might be provided on the basis of unemployment experience from 1922-1933 in the United States as a whole, with contribution rates of 3, 4, or 5 per cent, and with waiting periods of 2, 3, or 4 weeks in 52 weeks.

TABLE VI.—Estimated Maximum Number of Weeks of Benefits Payable by States

(Based on Standards of Draft Bill)

Waiting period	Rate of Contribution		
	3 per cent	4 per cent	5 per cent
2 weeks	10	15	21
3 weeks	11	17	24
4 weeks [1]	12	18	26

[1] On a cost basis a 2-week waiting period in 13 weeks is approximately equal to a 4-week period in 52.

It must be emphasized that these estimates should not be considered as guaranteeing that the durations of benefits indicated in Table VI can be paid in the actual experience of any one State. They are based on available statistics for the United States, but there is no certainty either that the estimates are entirely reliable, or that the employment and unemployment experience of the past will be repeated in the future. It is urged that those States that have more adequate statistics of their own rates of unemployment should make independent estimates in order to ascertain the duration of benefits possible under their own assumed unemployment compensation plans.

[fol. 112]

EXHIBIT "F" TO AFFIDAVIT

Statistical Summary of Business Conditions in Alabama
1929–1935

Indices Corrected for Trend and Seasonal Normal Equals 100

Year	Coal Production 1,000 net tons	Coke Production 1,000 net tons	Cotton Consumption 100 running bales	Electric Energy Consumed 100,000 kwh	Pig Iron Production 100 gross tons	Coal	Coke	Cotton	Electric Energy	Pig Iron	Steel	Composite
1929	1,495	396	529	916	2,244	102.8	111.7	117.0	108.7	107.5	114.3	111.9
1930	1,298	332	439	889	1,953	89.2	92.8	94.2	100.0	92.9	83.5	90.5
1931	1,000	245	455	894	1,394	68.7	67.9	94.7	96.3	65.8	64.8	77.0
1932	655	117	470	825	550	45.0	32.0	95.1	85.6	25.8	30.3	55.5
1933	731	139	537	869	742	50.3	37.8	105.5	87.4	34.5	48.4	66.1
1934	800	176	459	875	951	55.0	47.4	87.8	85.9	43.9	54.3	64.1
1935	712	167	508	977	1,057	48.9	44.6	94.7	94.3	48.5	58.1	67.6
1936 Aug.	888	255	620	1,206	1,481	61.4	68.7	116.7	115.8	70.3	90.8	91.3

Extract from University of Alabama Business News, February 1st, 1936 and October 1st, 1936.

[fol. 113] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF ALLAN LITTLE—Filed November 17, 1936

STATE OF ALABAMA,
County of Etowah:

Before the undersigned authority in and for the County and State aforesaid, personally appeared Allan Little, who being first duly sworn deposes and says that he is Agent and a Director of the Dwight Manufacturing Company, a corporation, hereinafter referred to as the "Company", and as such agent and director has knowledge of the facts herein deposed to and has the authority of the Company to make this affidavit.

I

The Company is a Massachusetts Corporation and has operated a cotton textile manufacturing mill in the State of Alabama for approximately forty years; that during this period there has been no cessation of operation at this mill of the Company due to conditions of unemployment and the employment at this mill has been practically continuous and in all substantial respects normal; that since the Company began to operate this mill none of the employees [fol. 114] thereof, except for a brief period while some of such employees were on a strike, have received any aid, charitable or otherwise, from Federal, State County or Municipal agencies, that deponent is advised of or has been able to learn of; that on the contrary such employees have at all times, except in the case of a few of such employees who were on a strike for a brief period, as hereinabove referred to, been self supporting and able to take care of themselves and their families.

II

The present operations of the Company are located in Etowah County, Alabama, and are known as the Alabama City Mill of the Dwight Manufacturing Company, the same being the only mill the Company has ever operated in the State of Alabama.

The records of the Company covering these operations show that its employment personnel for the following years has been in the employment of the Company for lengths of time in accordance with the following table:

	1930	1931	1932	1933	1934	1935	1936
1 to 5 years	62.8%	58%	56%	58.6%	48.4%	53.5%	60%
5 to 10 years	18.7	20.6	21.5	19.8	24.8	22.9	20.5
10 to 15 years	9.8	11.5	11.9	11.3	13.8	11.8	9.4
15 to 20 years	5.3	5.9	6.3	6.2	8	7.3	6.4
20 to 25 years	3.4	4	4.3	4.1	5	4.5	3.7

That during the following years the average number of employees employed by the Company in its operation of this mill has been in accordance with the following table:

[fol. 115] Average Number of Employees

Year	Men	Women
1930	973	575
1931	938	578
1932	1118	428
1933	1260	496
1934	1020	472
1935	1165	647

The amounts of the Company's payrolls for this mill during the years indicated is in accordance with the following table:

Pay Rolls

Year	Amount
1930	$1,050,784.75
1931	1,028,809.50
1932	883,004.86
1933	1,003,085.12
1934	852,371.15
1935	1,246,521.49

That during the following years the yardage of cloth produced by this mill has been in accordance with the following table:

Yardage

Year	Yards
1930	37,605,327
1931	54,263,376
1932	62,557,710
1933	56,447,525
1934	34,853,835
1935	54,863,574

The decrease in the above tables for the year 1934 in the amount of payrolls and the total yardage are due to the fact that for a short period of time during the year 1934 there was a general strike of textile workers in the Southern [fol. 116] Textile Mills, including this mill of this Company.

III

The Company during such time has sold and is now selling its products in the State of Alabama and also in various other portions of the United States. All of such sales and shipments to customers are f. o. b. cars to the order of the buyer at Gadsden, Alabama. The Company, in the conduct of its business over the period of its existence, has acquired a substantial and valuable good will with its customers and has for a great many years continuously sold its cloth to some of the same customers.

The Company pays substantial amounts of State and County ad valorem taxes on its property in the State of Alabama, annually, amounting to the approximate sum of $32,957.21; and also pays to the State of Alabama annually substantial amounts of taxes amounting to substantially the sum of $23,000.00.

The Company has in its employ in its operations in the State of Alabama 2,408 employees and has had in its employment during the times herein referred to approximately 1431 to 2453 employees.

The Company prior to and at the time of going into effect of the Federal Social Security Act and of the Alabama Unemployment Compensation Act, had in existence contracts for the sale and future delivery from time to time of cloth manufactured by the Company at this mill with persons, firms or corporations in the State of Alabama and with persons, firms or corporations in other states, many of which [fol. 117] contracts have not yet expired or been completely performed, and for the performance of which the Company is bound and obligated. The prices stipulated in such contracts for the delivery of cloth were based upon the price which the Company was obligated under its contract with its employees to pay to employees for their services.

There has been no cessation of operations in the business of the Company, nor has there been any interruption or cessation of operation in its business or in the actual em-

ployment of its employees at this mill during the past fifteen years, except that during the year 1934 when said strike of textile workers was in effect for a period of about 12 weeks. Nor has there been during such time any substantial curtailment in the total employee personnel regularly employed and reporting for work, except during the period of time when under the NRA Code promulgated by the Federal Government the Company was required to limit its operations to two shifts a day instead of three shifts a day. This mill of the Company is working now, and since such textile strike over two years ago has been working continuously and the Company has now employed and at work in this mill a personnel of 2,408 men and women.

That the operation of the Company and the employment of its employees has been such for the past eleven years down to and including the present time, that had the Alabama Unemployment Compensation Act and the Federal Social Security Act been the law and in effect no employee of the Company would have been eligible under the terms [fol. 118] of said laws to receive any benefits; that there is no indication at the present time, judging the future by the past, or from any facts that now appear to be known or probable, that any of its employees will in the future become eligible for benefits under the provisions of the Acts other than the occasional benefits which might be claimed intermittently by an employee or employees dismissed for cause.

That the business of the Company is not seasonal, such as is likely to result in frequent or customary unemployment of all or any part of its personnel; nor is it subject to shutdown for weather or other natural causes or from minor accidents in the mill or from machinery, nor is there any likelihood of a lack of raw material or lack of market outlet or any other reason which will subject the mill to shutdown. That the business of the Company is entirely separate both in ownership and operation from the business of any other person or corporation in the State of Alabama or elsewhere. That the Company has no connection or any kind with the employees of any other employers in the State of Alabama; and that any unemployment which might hereafter exist in any or all of such other businesses does not have any effect on the operation

of the Company's business. That there is no plant or business in Alabama whose operations have been slowed down or employment curtailed as a result of the Company's continued operation of its business or as a result of competition from the Company. On the contrary, the Company's continued operation of this mill has continuously [fol. 119] and directly contributed to employment in other business in Alabama and in other States.

IV

The Company (assuming the constitutionality of the Alabama Unemployment Compensation Law) and its employees are subject to the exactions by way of "levies, contributions, taxes or pay roll deductions", imposed by said Act. The Company is by the terms of the Act liable for the payment of $9,854.26 for account of the exactions imposed against it directly with respect to employment from Jan. 1, 1926, through August 31, 1936, and for the period of time from May 1, 1936, through Aug. 31, 1936, is liable for the payment of $5,537.82 with respect to the statutory percentage of wages of its employees exacted from its employees, but for the collection and payment of which the Company is made liable, or a total of $15,392.08, the payment of which is sought to be collected by the Respondents in the above styled case. That the Company will be required to pay an estimated amount of $2744.00 per month with respect to wages during September, October, November and December, which amounts will become due on the 15th day of each succeeding month for the preceding month, or an estimated total for the year 1936 of $26,368.08. The amount of tax which the Company will be liable for calculated at the percentages prescribed by the Act for 1937 and 1938 will be approximately $48,706.00 and $64,362.00, respectively, or a total of $139,436.08 for the three year period.

[fol. 120]

V

That substantially all of the employees of the Company, or more than eighty per cent, have notified the management that they object to and protest against any deduction being withheld from their wages in accordance with the provisions of the Alabama Unemployment Compensation

Act and that they have voluntarily contributed out of their wages to a fund made up by the employees of this Company and the Gulf States Steel Company and other Companies in the Birmingham District for the purpose of contesting in the Courts the validity of the Alabama Unemployment Compensation Act, and that such tests are now pending in the Circuit Court of Etowah County, Alabama, in suits having the name and style of P. O. Adams vs. Dwight Mfg. Co., and Hubert Killian vs. Gulf States Steel Company; that affiant has been informed and believes such information and on such information and belief deposes that in addition to over eighty per cent of the employees of this Company approximately 5,000 employees of other Alabama employers have contributed to the fund for the purpose of bringing and prosecuting the test suits above referred to; that therefore the Company is faced with the possibility of a multiplicity of suits and/or claims and demands in reference to such withdrawals as it makes for the account of its employees in accordance with the terms of the Alabama Unemployment Compensation Law, and that should the law be declared invalid it will be faced with great losses incident to the repayment of such sums in the event it deducts the same from the wages of its em-[fol. 121] ployees in accordance with the terms of the Act, the interest thereon, and large incidental costs in reference thereto.

That approximately eighty per cent of the employees of this company belong to an employees association which is now, and has for several years been, operating an insurance benefit fund which will probably be interfered with or displaced by the operation of the Alabama Unemployment Compensation Act and that for this and other reasons stated in this affidavit the employees of this Company almost as a unit object to the Act and protest against its enforcement.

Allan Little.

Sworn to and subscribed before me this the 29th day of Oct., 1936. Lillian Mann, Notary Public.

[fol. 122] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF W. W. FULGHUM—Filed November 17, 1936

STATE OF ALABAMA,
Jefferson County:

Before the undersigned authority in and for the county and state aforesaid personally appeared W. W. Fulghum who, being first duly sworn, deposes and says that he is Secretary and Treasurer of the Alabama Fuel & Iron Company, a corporation, hereinafter referred to as "The Company", and as such officer has knowledge of the facts herein deposed to and has the authority of The Company to make this affidavit.

I

The Company is an Alabama Corporation and has operated coal mines in the State of Alabama for approximately twenty-five (25) years; that during this period of time there has been no cessation of operation at any of the mines of the company due to conditions of unemployment, but, on the contrary, employment at the mines of the company has been continuous and in all substantial respects normal; that since the operation of the Company began [fol. 123] none of its employees have received any aid, charitable or otherwise, from federal, state, county or municipal agencies; that, on the contrary, they have at all times been self-supporting and able to take care of themselves and their families.

II

The present operations of the Company are located in St. Clair County, Alabama, and are known as its Margaret and Acmar Divisions.

The records of the Company covering these operations show that its employment personnel for the following years has been in the employment of the company for lengths of time in accordance with the following table:

	1930	1931	1932	1933	1934	1935
1 to 5 years	52%	50%	50%	51%	52%	60%
5 " 10 "	23	22	22	19	18	14
10 to 15 years	15	16	16	16	15	13
15 " 20 "	6	6	6	7	8	7
20 " 25 "	4	5	5	7	7	6

That during the following years the average number of employees employed by the company in its operations has been in accordance with the following table:

	Year	Men
Average Number of Employees:	1930	1,143
	1931	1,166
	1932	1,106
	1933	1,027
	1934	1,187
	1935	1,516

The amounts of the Company's pay rolls during the years indicated is in accordance with the following table:

[fol. 124]

Pay Rolls

Year	Amount
1930	$978,350.00
1931	911,796.00
1932	578,012.00
1933	486,534.00
1934	592,963.00
1935	1,307,898.00

That during the following years the tonnage of coal produced by the company has been in accordance with the following table.

Tonnage

Year	Tons
1930	731,162
1931	702,774
1932	516,277
1933	486,534
1934	592,963
1935	840,909

The increases in the above tables for the year 1935 in average number of employees, in the amount of pay rolls, and

the amount of tonnage are due to the fact that at this time there was a general strike of coal miners in the Alabama District, and extra shifts were put at work by this Company for the purpose of taking care of an abnormal increase in business due to the shut down on account of the strike of substantially all of the other coal mines in the district.

III

The Company during such time has sold and is now selling its products in the State of Alabama, and also in various other portions of the United States. All of such sales [fol. 125] and shipments to customers outside the State of Alabama are f. o. b. cars to the order of buyer, Margaret and Acmar, Alabama. The Company in the conduct of its business over the period of its existence has acquired a substantial and valuable good will with its customers and has for a great many years continuously sold its coal to some of the same customers. For instance, it has continuously sold coal to the Central of Georgia Railway Company for about 25 years, to the Ocean Steamship Company at Savannah, Georgia, for about 25 years, to Jno. A. Walker & Company, at Columbia, Tenn., for about 20 years, and to D. M. White & Son, at Goodwater, Ala., for about 18 years.

The Company pays substantial amounts of State and County ad valorem taxes on its property in the State of Alabama annually, amounting to the approximate sum of $17,200.00; and also pays to the State of Alabama annually substantial amounts of taxes, amounting to substantially the sum of $27,365.00.

The Company has in its employ in its operation in the State of Alabama fifteen hundred employees, and has had in its employment during the times herein referred to approximately one thousand to fifteen hundred employees.

The company prior to and at the time of the going into effect of the Federal Act and of the Alabama Act above referred to, had in existence contracts for the sale and future delivery from time to time of coal mined by plaintiff for delivery with persons in the State of Alabama, and in other States, many of which contracts have not yet expired or been completely performed, and for the perform- [fol. 126] ance of which the company is bound and obligated. The prices stipulated in such contract for delivery of coal were based upon the price which the company was

obligated under its contract with its employees to pay its employees for their services.

There has been no cessation of operations in the business of the company; now had there been any interruption or cessation of operation in its business or in the active employment of its employees for a longer period than a few days at a time, and never for a period as long as a single week during said entire time. Nor has there been during such time any curtailment in the total employee personnel regularly employed and reporting for work. The mains of the company are working now and during the times herein above referred to have been working continuously. The company has now employed and at work in its operations a personnel of fifteen hundred men.

That the operation of the company and the employment of its employees has been such from the time of the beginning of its operations, down to and including the present time; that had the Alabama Unemployment Compensation Act and the Federal Social Security Act been the law and in effect, no employee of the company would have been eligible under the terms of said laws to receive any benefits; that there is no indication at the present time, judging the future by the past, or from any facts that now appear to be known or probable, that any of its employees will in the future become eligible for benefits under the provisions of the Acts other than an occasional benefit which might be [fol. 127] claimed intermittently by an employee or employees dismissed for cause.

That the business of the company is not seasonal, such as is likely to result in frequent or customary unemployment of all or any part of its personnel; nor is it subject to shutdown for weather or other natural causes, or from accidents in the plant or from machinery, or lack of raw material, or lack of market outlet, or other reasons. That the business of the company is entirely separate both in ownership and operation from the business of any other person or corporation in the State of Alabama or elsewhere. That the Company has no connection of any kind with the employees of any other employers in the State of Alabama, and that an unemployment which might hereafter exist in any or all of such other businesses does not have any effect on the operation of the company's business. That there is no plant or business in Alabama whose opera-

tions have been slowed down or employment curtailed as a result of competition from plaintiff. On the contrary, plaintiff's continued operation of its business has continuously and directly contributed to employment in other business in Alabama, and in other states.

In deposing that the business of the company is not seasonal and that its employment has been uninterrupted, affiant does not intend to testify that it has operated its mines each and every working day. There have been work days during the slack season when the mines have not been in operation. However, such idle work days have not in any [fol. 128] way produced any unemployment among its employees because of a system which has been in operation by the company for a good many years which provides for each employees farming a certain required amount of acreage, raising a certain required number of hogs, and producing a certain required amount of garden food and canning a certain required amount of fruits and vegetables. In charge of this work the company has an agricultural expert who supervises it. The company furnishes to each employee acreage, mules, seed and other necessary equipment. As a result of this method of business not only have the employees of the company lived in comfort, but they have had many luxuries. They have not only never received a cent of assistance or relief, but have been able, out of their earnings, to furnish assistance and relief to others less fortunate.

Actual figures taken from our records, which are correctly kept, show that our employees produced the following products for the years 1932, 1933 and 1934:

	1932	1933	1934
Corn	16,361 bu.	34,990 bu.	28,148 bu.
Potatoes	18,435	18,995	18,539
Peas	2,216	2,252	1,870
Canning	100,218 qt.	119,890 qt.	100,590 qt.
Hogs	894	1,765	1,422
Weight (dressed)	165,032 lbs.	355,110 lbs.	302,278 lbs.
Sorghum	None	2,583 gal.	496 gal.

IV.

The Company (assuming the constitutionality of the Alabama Unemployment Compensation Law) and its employees are subject to the exactions by way of "levies", contributions, taxes or pay roll deductions" imposed by said Act. [fol. 129] The Company is by the terms of the Act liable

for the payment of $8,406.67 for account of the exactions imposed against it directly with respect to employment from January 1, 1936, through August 31, 1936, and for the period of time from May 1, 1936, through August 31, 1936, is liable for the payment of $4,230.62 with respect to the statutory percentage of wages of its employees exacted from its employees but for the collection and payment of which the company is made liable, or a total of $12,637.29, the payment of which is sought to be collected by the respondents in this case. That the company will be required to pay an estimated amount of $2,500.00 per month with respect to wages during September, October, November and December, which amounts will become due on the 15th day of each succeeding month for the preceding month, or an estimated total for the year 1936, of $22,637.29. The amount of the tax which the company is liable for at the percentages prescribed by the Act for 1937 and 1938 will be approximately $42,000.00 and $56,000.00, respectively, or a total of $120,637.29 for the three year period.

V

That substantially all of the employees of the company, or more than ninety per cent, have notified the management that they object to and protest against any deductions being withheld from their wages in accordance with the provisions of the Alabama Unemployment Compensation Act and have voluntarily contributed out of their wages to a fund made up by employees of the Gulf States Steel Company, of the Dwight Manufacturing Company and of other [fol. 130] companies in the Birmingham District for the purpose of contesting in the courts the validity of the Alabama Unemployment Compensation Act, and that such tests are now pending in the Circuit Court of Etowah County, Alabama, in suits having the name and style of P. O. Adams vs. Dwight Manufacturing Company and Hubert Killian v. Gulf States Steel Company; that affiant has been informed, believes such information, and on such information and belief deposes that in addition to the ninety per cent. of the employees of this company, approximately five thousand employees of other Alabama employers have contributed to the fund for the purpose of bringing and prosecuting the

test suits above referred to; that, therefore, the company is faced with the possibility of a multiplicity of suits and/or claims and demands in reference to such withdrawals as it makes for the account of its employees in accordance with the terms of the Alabama Unemployment Compensation Law, and that should the law be declared invalid it will be faced with great losses incident to the repayment of such sums in the event it deducts the same from the wages of its employees in accordance with the terms of the Act, the interest thereon, and large incidental costs in reference thereto.

This 28th day of October, 1936

W. W. Fulghum.

Subscribed and sworn to before me, this 28th day of October, 1936.

Eddie J. Sandlin, Notary Public.

[fol. 131] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF GEORGE F. PETER—Filed November 17, 1936

STATE OF ALABAMA,
Shelby County:

Before the undersigned authority in and for said State in said County, personally appeared George F. Peter who, being first duly sworn, deposes and says that he is the President of Southern Coal & Coke Company, plaintiff in the above styled cause, and hereinafter referred to as the company, and as such officer has knowledge of the facts hereinafter deposed to, and is authorized by said company to make this affidavit; that affiant deposes and says as follows:

I

The plaintiff, Southern Coal & Coke Company, hereinafter called the company, is a corporation duly organized and existing under the laws of the State of Delaware, and is duly qualified, in accordance with the laws of the State of Alabama, to do business in Alabama, and has been qualified

so to do and has continuously transacted business in said [fol. 132] State since the year 1918. The company's immediate predecessor in title was engaged in said business in the State of Alabama for more than nineteen years immediately preceding the company and operated under the corporate name of Southern Coal & Coke Company, and was an Alabama corporation.

That company now has and has had continuously since the year 1925 investment in the State of Alabama in excess of one hundred thousand dollars in lands, leases and plant property and equipment at its place of business at or near Boothton, Shelby County, State of Alabama, for the conduct of its business.

The business carried on and conducted by the company in said State is the mining, sale and distribution of coal, the ownership of coal lands either by direct title or under leases, the sale and disposition of property, the operation of a commissary, the renting and leasing of houses, and other business incidental to the mining and sale of coal; all of its employees live and perform their duties in the State of Alabama.

The company's principal office and place of business in the State of Alabama is and has been, during all the time hereinabove referred to, in Shelby County, Alabama, and the company, since 1918, has been and is a citizen of and having its legal residence and domicile in the State of Delaware.

The Company, during such time, has sold and is now selling its products in the State of Alabama, and also in various other portions of the United States. All of such sales and shipments to customers outside of the State of Alabama [fol. 133] are f. o. b. cars to the order of buyer, Boothton, Alabama. The company in the conduct of its business over the period of its existence has acquired a substantial and valuable good will with its customers and has for a great many years continuously sold its coal to some of the same customers.

The company pays substantial amounts of State and County ad valorem taxes on its property in the State of Alabama annually, and also pays to the State of Alabama annually substantial amounts of other taxes, the total so paid amounting to substantially the sum of $7,300.00.

The company has in its employ in its operations in the

State of Alabama three hundred employees, and has had in its employ, during the time herein referred to, approximately three hundred employees.

Plaintiff has operated its mines and business during the entire period of its existence. Coal production in Alabama is of a seasonal nature. As an illustration of this, the average days of plaintiff's operations (which is fairly consistent with the operations of other companies in Alabama engaged as is plaintiff in the mining and sale of domestic and steam coal) for the past six years has been 193 days worked in 1930, 206 in 1931, 116 in 1932, 186 in 1933, 214 in 1934 and 159 in 1935; and that the average days that the operations have been idle have been 83 work days in 1930; 70 in 1931; 160 in 1932; 90 in 1933; 50 in 1934; and 105 in 1935. The fewer days of operation and the larger number of idle days in 1932 and the first part of 1933 were due to the fact [fol. 134] that at this time plaintiff reduced its employment personnel by approximately forty men (this reduction being the direct result of the loss by the company of one of its valuable accounts on account of the fact that this customer changed its fuel requirements from coal to oil) and the decrease of average days operated and increase of average days idle for the year 1935 were due to the fact that a general strike existed in the coal fields of Alabama, including the employees of the plaintiff, for fifty days during this year. Plaintiff avers that notwithstanding the seasonal nature of its business, the average labor turnover of the plaintiff during the same years (with the exception of an increase in 1932 and 1935 due to the loss of the account and the strike above referred to) has been approximately 5 per cent. Plaintiff avers that the small per cent of labor turnover in its business is due to two causes, (a) the fact that a large percentage of plaintiff's employees have been continuously in its employ for a year many years and when there has occurred a cessation of work due to the seasonal nature of the business, or for other causes, instead of discharging such employees, it has been and will continue to be the policy of the plaintiff to divide the work that is available among all employees; (b) because of the fact that some of plaintiff's employees have been recruited from the farm population and during times of inability to work in the mines, secured the additional needed support to prevent them from becoming public charges or supported by relief or

other funds due to unemployment, by farming and gardening as an additional means of support for themselves and [fol. 135] their families during times of unemployment. Plaintiff further avers on information which he has received and believes that the same situation exists in the coal industry in the State of Alabama as a whole; that a large number of miners of Alabama have been recruited from the farm population in the general vicinity of the mines, and make use of these farms as bases during the time of unemployment.

The company, during all of such times and during the present time, has been and is in competition in the sale of its coal not only with coal operators mining coal in the State of Alabama, but with those mining coal in other States, particularly the States of Tennessee and Kentucky; that such competition has been and is so close and keen with its competitors in the other States that a very small differential in the sale price per ton of coal is sufficient to cause the company to lose a large portion of its business to its out of State competitors; that it has suffered, and will continue to suffer, its keenest competition with hydro-electricity, oil and natural gas distributors who are engaged in business in the State of Alabama, and who on account of the fact that in the manufacture and distribution of their products require a much smaller employment personnel, are, by reason of being required under the Alabama Unemployment Compensation Act to pay a substantially less amount of taxes or contributions, enabled to furnish even more and keener competition.

[fol. 136] II

That the operation of the company and the employment of its employees has been from the time of the beginning of its operations, down to and including the present time; that had the Alabama Unemployment Compensation Act and the Federal Social Security Act been the law and in effect, no employee of the company would have been eligible, under the terms of said laws, to receive any benefits except probably some portion of the forty by which its employment personnel was reduced as aforesaid; that there is no indication at the present time, judging the future by the past, or from any facts that now appear to be known or probably, that any of its employees will in the future become eligible

for benefits under the provisions of the Acts other than an occasional benefit which might be claimed intermittently by an employee or employees dismissed for cause.

That the business of the company is not seasonal in the sense such as is likely to result in frequent or customary unemployment of all or any part of its personnel; nor is it subject to shut-down from weather or other natural causes, or from accidents in the plant or from machinery, or lack of raw material, or other reasons. That the business of the company is entirely separate, both in ownership and operation, from the business of any other person or corporation in the State of Alabama, or elsewhere. That the company has no connection of any kind with the employees of any other employers in the State of Alabama, and that any [fol. 137] unemployment which might hereafter exist in any or all of such other businesses does not have any effect on the operation of the company's business. That there is no plant or business in Alabama whose operations have been slowed down or employment curtailed as a result of plaintiff's continued operation of its business or as a result of competition from plaintiff. On the contrary, plaintiff's continued operation of its business has continuously and directly contributed to employment in other businesses in Alabama, and in other States.

III

Plaintiff avers that under the terms of the Alabama Act, from January 1, 1936, through August 31, 1936, plaintiff became liable to the Commission in the sum of $3,519.70, which amount, in accordance with the contribution instructions of the Commission, and in accordance with the order of the Commission, became due and payable to the Commission on or before the 5th day of October, 1936.

Plaintiff further avers that the Commission demanded of the plaintiff prior to the filing of the bill of complaint herein the payment of said amount, and declined to make any further extensions in reference to said payments. That the company has been required and has been ordered by the Commission to pay an estimated amount of $800.00 per month with respect to wages during September, October, November and December, which amounts will become due on the 15th of each succeeding month for the preceding month, or an estimated total for the year 1936 of $5,900.00.

The amount of the tax which the company will become [fol. 138] liable for at the percentage prescribed by the Act for 1937 and 1938 will be approximately $11,000.00 and $15,000.00 respectively, or a total of $32,000.00 for the three-year period.

IV

That in addition to the payment of state and county taxes referred to in Paragraph I hereof, the company has paid to the Federal Government taxes annually in substantial amounts.

That no disagreements or disputes are pending between plaintiff and its employees and that plaintiff has in existence contracts of employment with all its employees, and which provide for the rate of pay to be paid plaintiff's employees so long as they remain in its employ (the term of employment, however, being subject to the will of either party), said contracts as to rates of pay not expiring until ——, 1937.

That so far as affiant knows or has been informed no agency existed in Alabama prior to the adoption of the Alabama Unemployment Compensation Act for the compilation or analysis of unemployment statistics or data other than the State and Federal Relief Agencies which dealt with the matter solely from the standpoint of relief; that no bureau or administrative agency of the State had any staff equipped for study of the data necessary to estimate the requirements of a compulsory unemployment compensation law or plan; no such studies as to Alabama were or are in existence prior to or since the adoption of the Act; the Legislature had undertaken none either before or during the passage of the Act. That plaintiff, and as far [fol. 139] as affiant knows or has been informed no other employer of labor in the State of Alabama, was called upon, before the adoption of the Act, for its records necessary to the constructive application of the schedules or to determine the rate or levy or probably benefits for any test period, and no information of any kind was sought by any one from the plaintiff as to its prior record of unemployment among its employees or as to the need of plaintiff's employees on account of unemployment in the past, or as to any estimate which might be made as to the need in the future.

That plaintiff is subject to and obeys all laws of Alabama regulating or touching the relation of employer and em-

ployee, such as the Workmen's Compensation Act, the laws relating to the employment of minors, the laws relating to the operation of coal mines, and that it has not, in any public investigation, been found or reported to be likely to contribute to unemployment in Alabama.

That if plaintiff is required to keep its books, to make and file reports with the Commission, to collect contributions from its employees and remit these contributions to the Commission, and to do the other things pursuant to the terms of the Act and the orders of the Commission, the performance of such acts will not only be extremely inconvenient to the plaintiff but the cost of doing the same will be a very substantial sum. It is impossible to estimate the amount of such additional cost because of the fact that it is impossible to tell with any degree of certainty as to what [fol. 140] will be required of the plaintiff under the terms of the Act. Affiant deposes, however, that the cost, as aforesaid, will be substantial, requiring the employment of additional clerical help and the expenditure of other sums necessary in carrying out the orders of the Commission.

George F. Peter.

Subscribed and sworn to before me this 7th day of November, 1936. W. H. Lyman, Notary Public. (Seal.)

[fol. 141] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF A. R. FORSYTH—Filed November 17, 1936

STATE OF ALABAMA,
Jefferson County:

Before the undersigned authority in and for the County and State aforesaid personally appeared A. R. Forsyth, who being first duly sworn, deposes and says that he is Vice President and Treasurer of the Gulf States Steel Company, a corporation, hereinafter referred to as "The Company", and as such officer has knowledge of the facts herein deposed to and has the authority of The Company to make this affidavit.

I

The Company is a Delaware Corporation and has been engaged in the manufacture of steel products in the State of Alabama for approximately twenty-three (23) years; that during this period of time there has been no cessation of operation of the manufacturing plants of the company due to conditions of unemployment with the exception of one brief period about the *the* year 1921, but, on the con- [fol. 142] trary, employment at the manufacturing plants of the company has been continuous and in all substantial respects normal.

II

The Company during such time has sold and is now selling its products in the State of Alabama, and also in various other portions of the United States. The company in the conduct of its business over the period of its existence has acquired a substantial and valuable good will with its customers and has for a great many years continuously sold its products to some of the same customers.

The Company pays substantial amounts of State and County ad valorem taxes on its property in the State of Alabama annually, amounting on the average to the approximate sum of $115,000.00, and also pays to the State of Alabama annually substantial amounts of other taxes, amounting to substantially the sum of $35,000.00.

The Company has in its employ in its operations in the State of Alabama, 3,019 employees.

The Company prior to and at the time of the going into effect of the Federal Act and of the Alabama Act above referred to, had in existence contracts for the sale and future delivery from time to time of products manufactured by the company for delivery with persons in the State of Alabama, and in other States, many of which contracts had not expired or been completely performed, and for the performance of which the company was bound and obligated. Some of these contracts are even yet unexpired and to the performance of which the company is bound and obligated. The prices stipulated in such contracts for delivery of its products were based upon the price which the company was obligated under its contract with its employees to pay its [fol. 143] employees for their services.

That the business of the company is not such as is likely to result in frequent or customary unemployment of all or

any part of its personnel; nor is it subject to shutdown for weather, or from accidents in the plant or from machinery, or lack of raw material, or lack of market outlet, or other reasons. That the business of the company is entirely separate both in ownership and operation from the business of any other person or corporation in the State of Alabama or elsewhere. That the company has no connection of any kind with the employees of any other employers in the State of Alabama, and that any unemployment which might hereafter exist in any or all of such other businesses does not have any effect on the operation of the company's business. That there is no plant or business in Alabama whose operations have been slowed down or employment curtailed as a result of the company's continued operation of its business or as a result of competition from the company. On the contrary, the company's continued operation of its business has continuously and directly contributed to employment in other business in Alabama, and in other States.

III

The Company (assuming the constitutionality of the Alabama Unemployment Compensation Law) and its employees are subject to the exactions by way of "levies", contributions, taxes or pay roll "deductions" imposed by said Act. The company is by the terms of the Act liable for the payment of $17,991.36 for account of the exactions imposed against it directly with respect to employment from January 1, 1936, through August 31, 1936, and for the period of time from May 1, 1936, through August 31, 1936, is liable for the payment of $10,344.33 with respect to the statutory [fol. 144] percentage of wages of its employees exacted from its employees but for the collection and payment of which the company is made liable, or a total of $28,335.69, the payment of which is sought to be collected by the respondents in this case. That the company will be required to pay an estimated amount of $5,024.45 per month with respect to wages during September, October, November and December, which amounts will become due on the 15th day of each succeeding month for the preceding month, or an estimated total for the year 1936 of $48,533.49. The amount of the tax which the company will be liable for at the percentages prescribed by the Act for 1937 and 1938

will be approximately $76,043.29 and $124,576.78, respectively, or a total of $249,153.56 for the three year period.

IV

That substantially all of the employees of the company, or more than ninety per cent., have notified the management that they object to and protest against any deductions being withheld from their wages in accordance with the provisions of the Alabama Unemployment Compensation Act and have voluntarily contributed out of their wages to a fund made up by the employees of this company, of the Dwight Manufacturing Company and of other companies in the Birmingham District for the purpose of contesting in the courts the validity of the Alabama Unemployment Compensation Act, and that such tests are now pending in the Circuit Court of Etowah County, Alabama, in suits having the name and style of P. O. Adams v. Dwight Manufacturing Company and Hubert Killiam v. Gulf States Steel Company; that affiant has been informed, believes such information, and on such information and belief deposes that in addition to the ninety per cent. of the employees of this company, a large number of other Alabama employers have [fols. 145-146] contributed to the fund for the purpose of bringing and prosecuting the test suits above referred to; that, therefore, the company is fac*t*e with the possibility of a multiplicity of suits and/or claims and demands in reference to such withdrawals as it makes for the account of its employees in accordance with the terms of the Alabama Unemployment Compensation Law, and that should the law be declared invalid it will be faced with great losses incident to the repayment of such sums in the event it deducts the same from the wages of its employees in accordance with the terms of the Act, the interest thereon, and large incidental costs in reference thereto.

This 30th day of October, 1936.

A. R. Forsyth.

Subscribed and sworn to before me, this the 30 day of October, 1936.

E. S. Armistead, Notary Public. (Seal.)

[fol. 147] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF H. D. WARNER

Gulf States Paper Corporation

My name is H. D. Warner. I am Secretary and Treasurer of Gulf States Paper Corporation. The principal place of business of the corporation is in Tuscaloosa County, Alabama. This plant began the work of construction or operation in 1928, and since the completion of the plant has operated continuously, with the exception of a shut-down of several months in the latter part of 1935 due to a strike, and with temporary shut-downs of less than two weeks duration necessitated by repairs, high water, etc., in 1934 (June 17th to July 1st, and September 1st to September 20th). At other intervals operations have ceased for as much as a week, but not as long as two weeks.

As of August 31, 1929, we had 493 employees on plant roll, 28 employees on plant salary roll, and an estimated 20 on central office roll, or a total of 541 employees.

As of October 15, 1936, we had 744 employees on plant roll, 54 employees on plant salary roll, and 18 employees on central office roll, or a total of 816 employees, an increase of 275 employees over August 31, 1929.

This progressive increase in employment throughout the period of the depression and embracing the entire period of [fol. 148] the depression, is set out on the Exhibits hereto attached marked Exhibits A and B respectively.

Exhibit A is a table showing the number of salaried employees by months beginning January, 1930, and ending with September, 1936. This may be subject to correction to the extent of one or two employees, through the determination of averages for the month. This includes plant employees only.

From this table (Exhibit A) it will be seen that the salaried employees have increased steadily and progressively without a set-back of more than one or two from the previous high; from 50 during January, 1930, to 73 during September, 1936. The exits from this group for any and all causes have not been checked in detail, but the number is so small that they may be properly said to be negligible. The amounts paid employees on a salary basis are also set forth on Exhibit A.

A large majority of the employees of Gulf States Paper Corporation during 1936 were in the employment of the Company before September 14, 1935, in the regular employ of the company, under a continuing relationship and were not re-hired after that date. I do not mean that there were fixed contracts for definite terms but th... the relationship of employer and employee had become established prior to the date stated.

Had the Alabama Unemployment Compensation Law been in effect beginning January 1, 1930, the amount of levies under the Law against the Company and its salaried employees would have been as follows:

[fol. 149] Levy on Company at Progressive Rate Increase Fixed by Act, Assuming a Beginning in 1930, Plus (a) 1% on Salaried Employees and (b) 1% on All Employees

Year	Rate	(a) Company and Salaried Employees	(b) Company and All Employees*
1930	1.90%	$2,179.76	$11,388.60
1931	2.80%	3,641.03	17,696.17
1932	3.70%	4,481.04	20,607.74
1933	3.70%	4,152.33	20,982.63
1934	3.70%	4,988.81	24,650.53
1935	4.00%	5,826.51	25,585.46
1936	4.00%	4,758.94	26,668.11

* Except central office: approximately $90,000 in 1935.

Based on the stabilized operations resulting from improvement in general conditions and absorption of the turnover resulting from the sudden increase in personnel resulting from NRA, in my opinion the amount of the levy upon plaintiff and its employees will continue indefinitely on a base pay roll of approximately $800,000 per annum, or, when the assumed average of 4% (3% plus 1% against employees) is reached, an annual levy of more than $30,000. [fol. 150] Exhibit B sets out a graph showing the average number of employees by months from January 1, 1931, through September, 1936. This includes only workers employed on an hourly wage basis, and excludes the salaried employees. The principal recession in the number of hourly workers from any previous high is the period following the extraordinary increase in the number of workers resulting from the adoption of the National Industrial Re-

covery Act in 1933. An increase of several hundred employees in July and August, 1933, resulted in a turnover beyond the Company's ordinary experience in the adaptation of the new personnel to the work.

There was also an observable reduction in the number of workers for a few months in the middle of 1935. As will be noted from the graph (with the exception of the decline from the peak following the extraordinary enlargement of personnel under NRA), the increase in personnel has been steady from the beginning of operation of the plant to a satisfactory normal line shown by the graph.

This graph shows the net average for the respective months, and does not show the total number of exits, voluntary withdrawals for personal reasons, and hires of new workers to take their places. It has not been found practicable by the Company within the time available and without material expense to trace all exits in order to ascertain [fol. 151] which would have been eligible for benefits under the Alabama Unemployment Compensation Law had it been effective during the period shown by the graph. Based upon a rough approximation, I am of the opinion that the distribution of benefits under the conditions of eligibility determined by the Act would have been a small fraction of the total levies against the Company and its employees as to the workers employed on an hourly basis, and would, as above stated, have been nominal and negligible as applied to plant workers employed on a salary basis, and would have amounted to nothing for salaried officers in the central office.

The sales of the product of Gulf States Paper Corporation are principally to purchasers in interstate commerce, not more than five (5%) per cent of its sales being to purchasers in Alabama.

There is no present prospect in the operation of the business of Gulf States Paper Corporation of stoppages of operations or of any substantial curtailment of employee personnel.

I have been requested to compile certain data from official reports and other sources indicated below:

(1) I have been requested to obtain affidavits from representstive industries or employers showing as accurate as possible cross-sections of the constructive application of the Act to their respective industries or businesses. I have ac-

cordingly obtained showings from those which were ob-
[fol. 152] tainable in time for use at the first setting of the cause in which this statement is submitted, and submit them herewith:

Bituminous Coal Industry: all mines, consolidated.

Waterworks and electric utility: Alabama Water Service Co.

Wholesale merchants (hardware): Moore-Handley Hdwe. Co.

Life Insurance Companies: Protective Life Insurance Co.

Rubber Tire Industry: Goodyear Tire & Rubber Co. (Ala.).

They constitute, in my opinion, representative cross-sections of employers in Alabama included within the Act.

(2) I have been requested to compare this Company's experience of full time operations since its beginning with known examples of other plants or businesses.

(a) Highway Contractors.—The field workers in these organizations are employed generally from the floating labor pool in the vicinity of the job. During the past few years, when most highway construction has been with Federal aid, Federal relief agencies have required contractors to take workers assigned from the relief rolls in the several communities where the work is done. After the job is over the common labor is dropped permanently unless by chance another job is obtained. Contractors in this group are essentially nomadic and produce a high percentage of discharges.

(b) Building and Railway Contractors.—A somewhat similar condition obtains on all construction work. According to the affidavit of Mr. Joseph Halfpenny (Table A), approximately 10% of the labor in industries not exempt under the Alabama Act is employed in building and construction, compared with 39% in all manufacturing and not more than 2% or 3% in the manufacture of paper.

[fol. 153] (c) Manufacturing.—A wide variation in stoppages or exits prevails within the manufacturing group, from a plant of continuous operation, such as Gulf States Paper Corporation, to machines and foundry shops, furnaces, and like establishments in which there exists a heavy

excess of competitive plant capacity over market and where labor is a large factor in the manufacturing process, employment varying almost directly with orders gained in a competitive market and wholly seasonal operations such as canneries, cotton seed oil mills and like operations which can obtain their raw material only seasonally and must work it up immediately and are closed down for the remainder of the year.

(d) Professional.—At the extreme end is the professional group, as to which quits or stoppages resulting in eligible unemployment are rare. Thus in the office of counsel for plaintiff in this proceeding we are authorized to state that there have been only two exits within the last six years, both being discharges for cause, to which eligible unemployment might (if the statutory conditions were fulfilled) have attached, all other exits having been under clearly non-eligible conditions.

(3) I have been requested to state briefly facts within my knowledge or available from specialists in the matter of the existence of actuarial data sufficient to determine the amount of tax or levy necessary to provide unemployment insurance on the basis predicated by the Alabama Act.

From a monograph upon the "Actuarial Factors in State Unemployment Compensation Plans" issued by the Federal Social Security Board, January, 1936, accompanying a suggested form for State Acts, the following excerpts are quoted. The portions not indented are statements of affiant. The portions quoted and indented are from the monograph where not otherwise indicated.

[fol. 154] Based on my study of the matter I am able to state that no adequate actuarial or experience data is available; that one of the essential purposes of a two year waiting period is to require reports and study those reports, with a view to possible exclusions, inclusions or statutory changes in the levies or in the conditions to or amounts of benefits, before the benefits become distributable under the Act.

"With the exception of the State of Wisconsin, no State has had actual experience with unemployment compensation in this country and the Wisconsin act has been in effect too short a time to yield any actuarial experience. In lieu of such experience, it is necessary to *estimate* the

benefits which could be paid in each State in the future under the provisions of the suggested bill. The best method of arriving at such an estimate of possible future benefits would be to assume that an unemployment compensation plan, similar to that proposed in the suggested bill, had been in effect in each State for a period of years, and then to study the hypothetical past experience as a guide to the future. Unfortunately, the dearth of State statistics on the unemployment problem makes such calculations for individual states very difficult in most instances. The only recourse when State statistics are wholly inadequate, is to estimate State behavior in terms of average figures for the United States.

"The suggested State unemployment compensation bill provides that two years elapse between the initiation of collections of contributions and the initial payment of the benefits. Employment records will of course have to be instituted for administration purposes when the plan goes into effect and these records will furnish some data which should be analyzed by each State before benefit payments are started. Such an analysis would probably indicate that corrections should be made in the estimates included herein."

(Federal Social Security Board, p. 1).

The monograph estimates (page 2) that for the United States 45.6% of the total workers gainfully employed would be included in the class of compensable labor forces not ex-
[fol. 155] cluded by the Federal Act (without exclusion of carriers' employees subsequently exempted by the Alabama Amendment); for Alabama this percentage of the total gainfully employed in the nonexcluded groups is estimated at 30.4% (that is, 312,000 out of a total of 540,000 non-agricultural gainful workers, out of a total of all gainful workers of 1,026,000. This estimated percentage of gainful workers subject to the Act is below the national average due to the fact that a majority of the workers in Alabama gainfully employed are agricultural. This figure is not the Board's estimate of the number of workers actually to be covered but the total estimated compensable workers.

"A plan initiated now would, of course, exclude from immediate participation the vast number of unemployed,

many of whom will eventually be covered through reemployment in employments that would be covered by the plan."

(Federal Social Security Board, p. 4).

The monograph sets out a rough approximation of the number of workers in each State who will be covered by the Federal excise tax, under a plan assumed to have been initiated in 1933. For Alabama it is estimated at 204,000, or approximately 20% of the estimated total workers gainfully employed in the State in 1930.

"Utilizing the Bureau of Labor Statistics and the United States Censuses of Occupations and Unemployment of April, 1930, estimates have been made of the yearly average employment and unemployment within the compensable labor force by States for each year, 1930 through 1933, the results of which are shown in Table III. The dependability of these estimates is subject to question, at least for part of the period, because the data upon which they were based are inadequate and also because the limited time [fol. 156] available for study necessitated the use of unrefined statistical methods. Several checks with other information indicate, however, that these estimates are at least fair approximations of what probably existed. They may therefore be used as a guide in the absence of better data.

"More accurate indicators could probably be obtained from the statistical treatment of city surveys of unemployment where such are available, or from an examination of actual employment records within a State."

(Federal Social Security Board, p. 6).

"It should be recognized that the number unemployed is not the only factor conditioning the behavior of an unemployment compensation plan; the length of time that the unemployed have been idle is an important conditioning factor also, and one which will vary somewhat from State to State according to the industrial and economic characteristics of the area. If there is a continuous turn-over of labor so that large numbers of the labor force are without work for relatively short periods only, the drain on the unemployment compensation funds will be much greater than if the area includes large stranded populations subject to chronic unemployment. How much allowance should be made for

such factors is almost impossible to estimate before State experience has been accumulated, and adjustments may become necessary as data are gathered under the operation of the plan."

(Federal Social Security Board, p. 9).

"State incomes under the plan will vary year by year according to fluctuations in the number of covered persons employed as well as in their wages. Both factors will have an important bearing on the total amount raised. • • • Since low rates of pay tend to go hand-in-hand with high rates of unemployment, the years when incomes raised are smallest will also be the years when the number of unemployed eligible for benefits is greatest. And, unless reserves have been accumulated during less adverse times to meet depression emergencies, drastic measures will have to be taken to maintain a system on a solvent basis."

(Federal Social Security Board, p. 10).

(4) I have been requested to present certain excerpts from public statements or releases having a possible bearing upon the common understanding as to the relationship between the tax and appropriation provisions of the Federal Social Security Act relating to old age benefits and unemployment insurance:

[fol. 157] (a) Statement by the President in address broadcast from New York October 31, 1936 (text being taken from New York Times for November 1, 1936, page 36), relating to Federal Social Security Act:

"They tell the worker his wage will be reduced by a contribution to some vague form of old-age insurance. They carefully conceal from him the fact that for every dollar of premium he pays for that insurance, the employer pays another dollar. That omission is deceit.

"They carefully conceal from him the fact that under the Federal law he receives another insurance policy to help him if he loses his job and that the premium of that policy is paid 100 per cent by the employer and not one cent by the worker. They do not tell him that the insurance policy that is bought for him is far more favorable to him than any policy that any private insurance company could afford to issue. That omission is deceit.

"They imply to him that he pays all the cost of both

forms of insurance. They carefully conceal from him the fact that for every dollar put up by him his employer puts up three dollars—three for one. And that omission is deceit.

"But they are guilty of more than deceit. When they imply that the reserves thus created against both these policies will be stolen by some future Congress—diverted to some wholly foreign purpose, they attack the integrity and honor of American government itself. Those who suggest that are already aliens to the spirit of American democracy. Let them emigrate and try their lot under some foreign government in which they have more confidence."

(b) Text of page advertisement purporting to be written and paid for by The Democratic National Committee, Hotel Biltmore, New York City, omitting caption and table:

"You Can't Lose Because—You get more than you put in. No matter when you die, you and your family get all you paid in and more. If you live to 65 years, you get a pension three times bigger than you could get from any insurance company at the same rate.

[fol. 158] "The Social Security Act is the greatest insurance bargain ever offered.

"The Act provides aid to the blind, dependent mothers and crippled children. No tax is imposed on your pay envelope to pay for this aid.

"The Act provides insurance against unemployment. No Federal tax is imposed on your pay envelope for these pensions.

"It gives every worker in this country what private insurance companies call a *combination life and annuity policy.*

"The law makes the employer pay half the cost of this policy. The worker pays the other half.

"Thus you get back more than you pay in.

"If you die before 65, the insurance goes to your family.

"If you reach 65, you retire on the kind of an annuity only the well-to-do can afford to buy as private insurance, because the premiums to a private insurance Company for the same protection would be from *three* to *five times as much* as you pay to Uncle Sam.

"All of the above facts also apply in the case of a woman worker. Marriage does not affect a woman's right to the annuity for which she has paid. If she dies before reaching annuity age, the amount to which she is entitled goes to her estate.

"Existing private pensions are not affected in any way by the law.

"Your employer must match dollars with you to make your old age safe from want

This advertisement written and paid for by "The ~~Democratic~~ National Committee, Hotel Biltmore, New York City."

(Chicago Tribune, p. 4, Nov. 2, 1936)

[fol. 159] (c) Excerpt from address by Hon. Robert F. Wagner, U. S. Senator from New York, who introduced and reported the Federal Social Security Bill in the United States Senate, broadcast from New York, Monday night, November 2, 1936:

"The truth is that the Social Security Law is increasing tremendously the compensation that the worker receives for his services, and I shall tell you how. First of all, let us take the old age insurance system, under the Roosevelt Social Security Law it is designed to spare the worker of today from the humiliation of charity in his old age to assure him of dignified and substantial monthly insurance payments when he retires at the age of sixty-five. This insurance system is an absolutely sound system, backed by a fund in the U. S. Treasury. Into this fund the worker pays regular premiums, just as he would pay premiums if he bought an old age insurance policy from a private insurance company, but there is this tremendous difference: For every dollar that the worker pays into this old age insurance fund, his employer is required to add another dollar and both dollars belong to the worker.

"In addition, the whole cost of administering the system is paid for by the Government. As a result, each worker gets a vested and certain right in an old age annuity that is two and one-half times as great as he pays for. It is his absolutely and if he does before reaching the age of sixty-five, it will be paid to his family. The

constant flow of money into the worker's insurance account to protect him when he grows old is his first pay increase under the Social Security Law.

"Secondly, the law provides for unemployment insurance that does not cost the worker a single penny. It is paid for entirely by the employer and the money that the employer pays into a fund to care for the worker when he loses his job, that is the worker's second pay increase under the Social Security Law.

"Now to sum up, in order that I may be perfectly clear under both unemployment insurance and old age insurance, what does the worker contribute to his own fund?

"He pays a premium of one dollar for every one hundred dollars of wages he obtains. What does the em-
[fol. 160] ployer contribute? The employer pays two dollars for every dollar the worker contributes. Who gets this money? Both the worker's dollar and the employer's two dollars are paid to the worker in the form of unemployment insurance and old age insurance. Is that all the worker gets? No, he gets the earnings on the old age pension fund.

"That, briefly, is why I say that the Social Security Law means a pay increase to the wage earners of America.

* * * * * * *

"They say that the funds for old age and unemployment insurance are not safe. They insinuate that the insurance fund will be stolen by the United States Government; that is a brazen falsehood. * * *

"This is the first time in American history that any reasponsible person has tried to besmirch the good faith of the American Government. It is a last desperate maneuver of the Republican opposition that the American people will indignantly repudiate."

[fol. 161] Administrative Interpretation of Power of State to Appropriate for Direct Relief. See Constitution, Sec. 93

No instance has been developed by checking the statutes for the past ten years of any direct appropriation by the State for the relief of destitution or unemployment or for private relief not connected with service of the State or

arising out of some mistake, act or negligence involving the State.

A review of administrative acts since the onset of the current depression and cycle of unemployment discloses the following representative expressions or practice.

(5) I have been requested to excerpt the facts ascertainable from the files of the Governor's office set out below, relating to the attitude of the State of Alabama to direct relief of destitution or hardship resulting from unemployment both during the depression and in general.

(a) In response to the provisions of Section 1 of Title I of the Federal Emergency Relief and Construction Act of 1932 (15 U. S. Code, Sec. 605-a), the Governor and the various relief agencies in the State concerned with destitution and unemployment presented sundry applications to the Reconstruction Finance Corporation. For convenience, condensed reference is made to this measure in the footnote. * These applications were presented through the

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* Section 1 of the Act related to the relief of destitution, and made available to RFC $300,000,000 "to be used in furnishing relief and work relief to needy and distressed people, and in relieving the hardship resulting from unemployment," to be available for payment to the Governors of the several states upon application by them in accordance with the Act, viz., upon a showing that the funds and resources of the State and its public subdivisions and private contributions were inadequate to meet its relief needs. Section 1 (d) provided as follows:

"d) Nothing in this section shall be construed to authorize the corporation to deny an otherwise acceptable application under this section because of constitutional or other legal inhibitions or because the State or Territory has borrowed to the full extent authorized by law. Whenever an application under this section is approved by the corporation in whole or in part, the amount approved shall be immediately paid to the governor of the State or Territory upon delivery by him to the corporation of a receipt therefor stating that the payment is accepted subject to the terms of this section."

Section (e) authorized the Governor to transfer the Federal aid money to any municipality or political subdivision.

[fol. 162] Governor. Accompanying the first application, dated August 15, 1932, which related to funds for direct relief and work relief for the City of Birmingham and Jefferson County, the Governor forwarded with the appliion an explanation in the form of the letter accompanied by a copy of the Proclamation of the Governor dated August 4, 1932, calling an extraordinary session of the Legislature to convene August 16, 1932. With reference to the subject of relief of destitution or unemployment the following clauses were inserted in the call:

"11. To provide that any county or municipality in the State may directly contribute of its public funds for the relief of unemployment, or for taking care of the unemployed and the destitute, in any manner that the municipality or county may see fit; to authorize any municipality or county to borrow money from the Reconstruction Finance Corporation, or from any other source, for the purpose of taking care of the destitute or for giving employment to the destitute or unemployed, and to provide for ratifying and making legal any payments that may have been made by counties or municipalities in relief work or in giving jobs or employment to the destitute or unemployed.

• • • • • • •

"17. To provide any legislation that may be necessary to permit the State to secure the full benefit of the emergency relief and construction act of 1932, passed by Con-[fol. 163] gress and approved by the President of the United States July 21, 1932; and to provide such legislation as may be necessary or proper to permit any municipality or any county of the State to secure the full benefit of said Act; and to provide such legislation as may be necessary or proper to authorize corporations to be formed and regulations to be provided for such corporations in order that such corporations may receive the benefit of the provisions of the said act; and to provide any legislation which may be necessary and proper for the said act to be taken advantage of in any way in the State of Alabama."

The call also included the following clause:

"14. To provide for the payment of Alabama's current debts; for construction and maintenance of public roads;

for matching Federal road funds; for keeping our schools open and the salaries of the teachers paid promptly; for reducing salaries, wages and appropriations; for abolishing useless offices and departments; for consolidating departments and for balancing the budget of the State."

The answer to questionnaire set out in RFC Emergency Relief Bulletin No. 1, August 2, 1932, issued in the administration of the Federal Act above mentioned, returned with the Governor's application made on account of the City of Birmingham and Jefferson County, contain this statement:

"(2) (a) The City and County have made commitments in aid of relief work, and notwithstanding lack of authority or doubts as to their authority, to the extent of $105,000 in respect to expenditures which are past due. • • •

"(c) There is no relief to be expected under existing law from State government funds • • • and the local relief agencies have been advised by the Governor that it is not possible for the State to participate in direct relief, as a result of both the condition of the State treasury and of constitutional inhibitions. • • •

"(e) There are no other sources from which relief may be expected except such funds as may be made available under the Emergency Relief Act. • • •

"III. There has been no emergency action to provide relief funds taken by the State since January 1, 1931. The State is inhibited by constitutional limitations. • • • Relief in the industrial areas through action of [fol. 164] the Legislature or amendment of the Constitution will be seriously handicapped by the unwillingness of the people to remove constitutional limitations. In the majority of the counties of the State, although grave want, unemployment and even destitution exist, the people as a whole are not in danger of starvation, and it will be difficult if not impossible to obtain a ratification of constitutional amendments which would remove the limitations upon the industrial counties, where the destitution is ominous.

"Unless relief is immediately forthcoming, the relief agencies in the City of Birmingham and Jefferson County

will be forced to suspend their relief work and no alternative can be expected other than wholesale starvation or disorder. The suspension of this service would mean that approximately 10,000 families, consisting of 50,000 people, or one-seventh of the population of the County of Jefferson, would be without food or any source from which it could be obtained.

"The foregoing is the existing situation as to organized relief agencies, which does not by any means reflect the total of destitution in Jefferson County. Numerous employers or former employers of labor are extending credit, not reflected in the above report, as are practically all citizens of the County in position to respond to direct appeals. The standing under-employed (below the margin of sustenance) are estimated at 40,000 heads of families, reflecting an ominously large proportion of the total population of the County."

Proposed Amendment to Constitution

By Joint Resolution (No. 11, Acts Ex. Sess. 1932, p. 12), passed by the House of Representatives August 30, 1932, and by the Senate September 6, 1932, there was submitted to the electors a proposed amendment to the Constitution to authorize counties and municipalities to borrow money from the RFC under the Emergency Relief and Construction Act of 1932, even if in excess of their Constitutional debt limits, and use of funds in furnishing relief and work relief to needy and distressed people, and in relieving the [fol. 165] hardships resulting from unemployment, etc. The proposed amendment also included the following clause:

"Each municipality and each county in the State is authorized to appropriate funds for furnishing relief and work relief to needy and distressed people and to relieve the hardships resulting from unemployment, and any appropriation that may have heretofore been made by any municipality or county is hereby declared to be legal."

This submission followed very general expression of doubt by county authorities and County Attorneys as to the validity of the use of County funds for direct relief. This amendment was submitted to the electors at the elec-

tion held November 8, 1932, and was rejected by a vote of — for and — against the proposed amendment.

Following the rejection of this amendment the Legislature promptly enacted by Act No. 289, approved November 14, 1932 (Acts 1932, p. 283) a law to enable County authorities to make provision for the care of the poor and needy by statute reading as follows, effective immediately:

> "SECTION 1. That the Court of County Commissioners, the County Board of Revenue, or other governing body in any County shall have the power and authority, with the approval of the State Child Welfare Department, to make other or further provision for the care of the poor and needy of each or either of the counties. The disbursement of any funds to be made through such agencies and in such manner as may be approved by the State Child Welfare Department."

Counties had previously been authorized by Act No. 339, approved July 2, 1931 (Acts, 1931, p. 397), to make appropriations of funds "to be expended by the County Board of Child Welfare for the relief of children under eighteen (18) years of age."

[fol. 166] [NOTE.—An Act for the aid of crippled children by authorizing the State Board of Education to comply with the provisions of the Federal Social Security Act, and to extend the service now maintained by the State Board of Education for locating crippled children, was adopted in 1935 (Acts 1935, p. 870).]

The statutory provisions in Alabama in addition to the foregoing in relation to the relief of destitution include the following grants of authority to counties. There has been discovered no statute purporting to authorize any state office, board or department to disburse state funds for direct relief of destitution.

(a) With the additional provisions herein mentioned, Section 6755 (13) of the Code, which has been in effect for many years in Alabama, makes provision for the only authority granted to the counties in relation to the relief of destitution or unemployment (that is, paupers or indigent persons), not in excess of $6.00 per month, other than through the general pauper laws contained in Chapter 50

of the Code (Sec. 2787 et seq.). See Michie's Code, Section 2806, note.

Prior to the Code of 1907, Commissioners' Courts in Alabama had been vested with a discretion in the application "of the well recognized power for the relief of paupers within their jurisdiction"; but by sections new to the subject in the Code of 1907 (Section 1607) this power was limited to temporary provision for one month "and then [fol. 167] only in cases of emergency." The intent of the statute, as asserted in State v. Mims, 174 Ala. 233, at p. 235, from which the above quoted phrases are excerpted, was further confirmed by the provision of Section 1603, whereby the Commissioners' Courts are commanded "to prevent the poor from strolling from one district to another." These sections of the Code of 1907 (1603 and 1607) are found as sections 2792 and 2796 of the present Code.

The Extra Session of the Legislature in 1933 made no further provision relating to the matter of direct relief of destitution or unemployment with respect to State, counties or municipalities.

Nor is any direct legislation upon the matter found in the Acts of the Legislature for the sessions held in 1935 and 1936. By Section 18 of Act No. 19, approved January 31, 1935 (Acts 1935, at p. 35), relating to the imposition of an additional excise tax upon the storing or withdrawal of motor fuels, etc., it is provided that:

> "That the proceeds from one cent of said tax herein levied may be used by the Governor of the State of Alabama at any time within twelve months from the approval of this Act for the purpose of matching any United States Government funds on any fair and reasonable basis."

No one has challenged in the Courts the validity of the clause or the interpretation of Section 18 by the Governor or the delegation of power inherent in the clause, if it be construed as authorizing "matching" except in relation to federal aid of highway construction.

[fol. 168] For many years there has been known in public administration in Alabama the practice of matching federal aid funds in relation to the construction of highways, since the adoption of the Federal Aid Law of July 11, 1916, to which the State assented by the Alabama High-

way Code adopted in 1927 (Acts 1927, p. 248, at p. 360; Michie's Code, 1927, Sec. 1397 (40)). The process of "Matching Federal Aid" in relation to the construction and maintenance of public roads in the State was included in the call for extraordinary session made by the Governor August 4, 1932, as quoted in Item 8 of the call, supra.

Under this Act it is understood that the Governor of Alabama during the twelve months period of his limited authority under the Act of January 31, 1935, above quoted, has made use of a portion of this fund to provide highway work intended primarily for relief, and that this application of the funds was accepted by the Federal authorities in the distribution of Federal relief monies as a contribution to depression relief by the State.

Inspection has disclosed no additional legislation which might have any bearing upon appropriation for poor relief or for direct aid for the relief of destitution or unemployment, other than an Act relating to hospital accommodations and services for the poor in counties having a population of not less than 75,000 nor more than 100,000 (Acts, S. S. 1932, p. 49).

———.

[fol. 169] STATE OF ALABAMA,
Jefferson County:

Before me the undersigned authority in and for said County and State personally appeared H. D. Warner who, being by me first duly sworn, deposes and says that the facts set out in the foregoing statement prior to numbered section (1) are true as of his own knowledge or have been compiled from the records of the Gulf States Paper Corporation under his direction and are true to the best of his knowledge, information and belief; that as to the matters and facts set out in numbered sections (1) and following, including sundry excerpts and reports, he is informed and believes that the same are correct.

H. D. Warner.

Sworn to and subscribed before me this 7th day of November, 1936.

L. J. Caran, Notary Public, Jefferson County, Alabama.

[fol. 170] EXHIBIT "A" TO AFFIDAVIT

(1) Date of Roll	(2) Salaried Employees (Plant)*	(3) Salaries
1930		
January	50	$9,758.19
February	49	8,875.60
March	49	9,715.26
April	49	8,941.27
May	55	9,640.06
June	55	9,435.39
July	57	9,868.92
August	56	9,791.21
September	54	9,618.48
October	55	9,666.00
November	55	9,634.17
December	55	9,779.58
		114,724.13
1931		
January	54	10,495.29
February	58	10,686.12
March	57	11,533.27
April	60	11,281.83
May	60	11,393.08
June	59	10,844.80
July	58	10,667.71
August	62	11,437.28
September	60	10,713.20
October	57	10,473.94
November	57	10,152.08
December	57	10,358.33
		130,036.93
1932		
January	57	11,575.30
February	57	10,470.53
March	57	11,014.17
April	56	10,724.24
May	55	11,035.58
June	54	10,180.63
July	57	9,565.01
August	58	9,791.20

*Does not include central office; approximately $90,000 for 1935.

(1) Date of Roll	(2) Salaried Employees (Plant)*	(3) Salaries
1932		
September	57	$9,329.40
October	58	9,217.82
November	57	8,945.21
December	59	9,260.14
		121,109.23
[fol. 171] 1933		
January	59	9,867.13
February	59	9,282.36
March	59	8,801.71
April	58	9,126.79
May	58	9,281.30
June	59	8,742.42
July	60	8,911.42
August	59	9,242.40
September	62	9,659.60
October	64	9,495.42
November	63	9,770.78
December	65	10,043.67
		112,225.00
1934		
January	67	10,623.79
February	66	10,351.83
March	66	10,883.59
April	67	11,461.61
May	66	11,724.88
June	66	11,211.33
July	66	11,278.08
August	66	11,430.97
September	67	11,675.14
October	70	11,307.55
November	69	11,380.07
December	71	11,503.88
		134,832.72

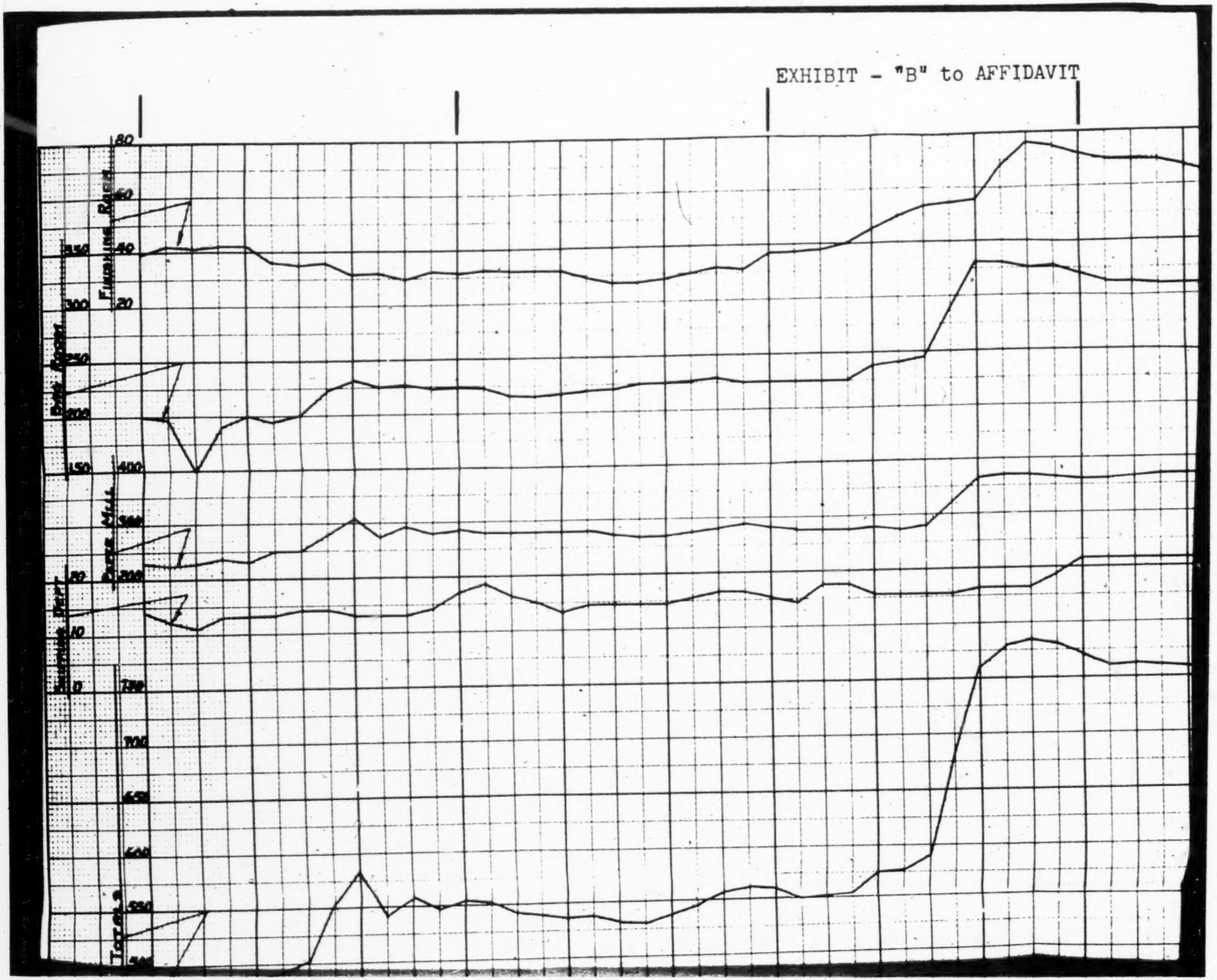
*Does not include central office; approximately $90,000 for 1935.

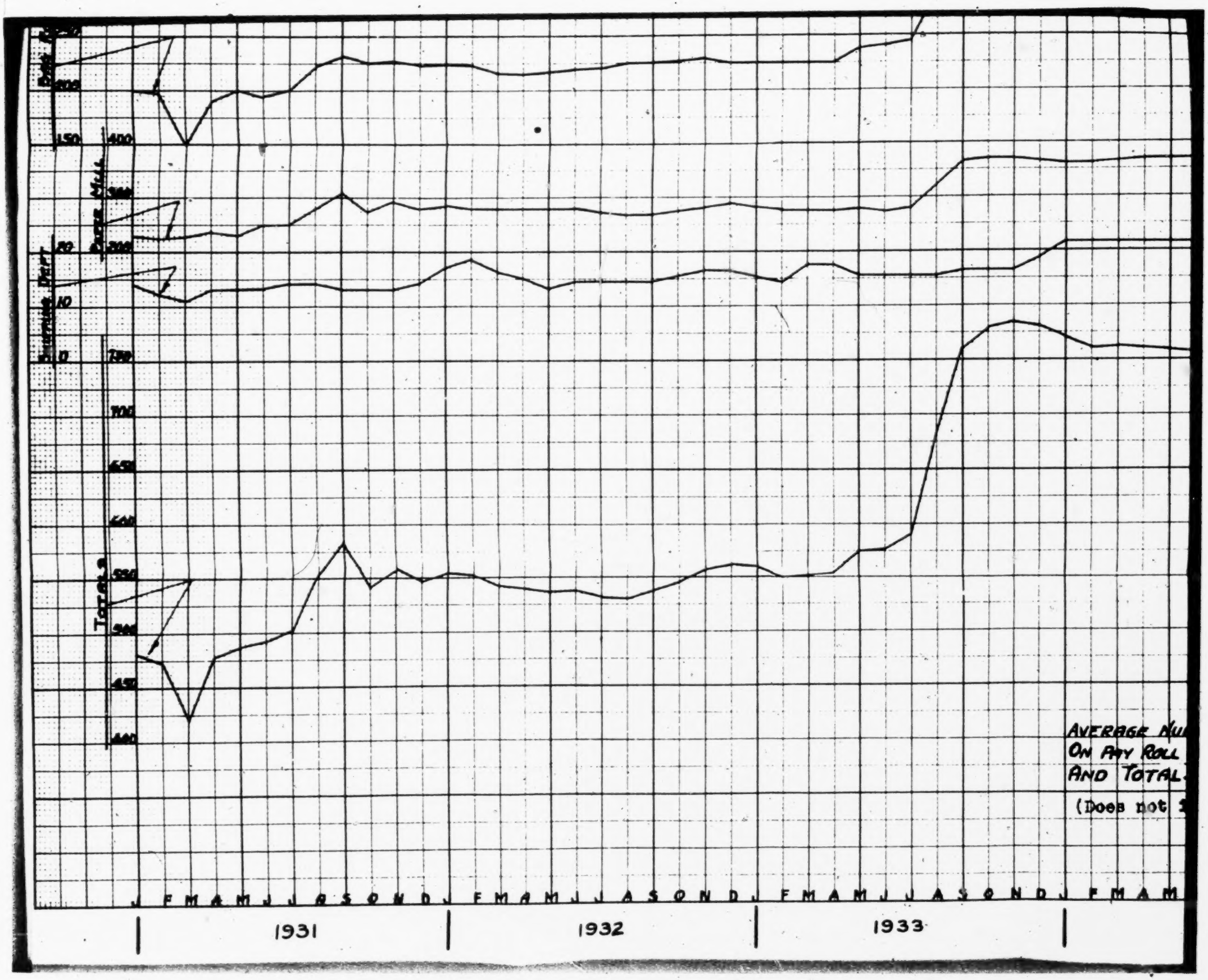
(1) Date of Roll	(2) Salaried Employees (Plant)*	(3) Salaries
1935		
January	69	$11,942.93
February	69	11,654.64
March	69	11,580.12
April	71	13,307.99
May	69	12,076.03
June	70	11,844.64
July	74	12,143.71
August	74	13,497.31
September	74	12,629.70
Oetober	72	11,593.13
November	72	11,685.62
December	71	11,707.01
		145,662.83
[fol. 172] 1936		
January	72	12,119.20
February	72	12,551.94
March	72	11,923.20
April	73	12,317.77
May	74	14,062.58
June	72	11,902.81
July	71	11,987.15
August	71	13,368.14
September	73	12,951.31
October (through 15th)	71	5,789.44
		$118,973.54

*Does not include central office; approximately $90,000 for 1935.

(Here follows one photo, side folio 173.)

EXHIBIT - "B" to AFFIDAVIT

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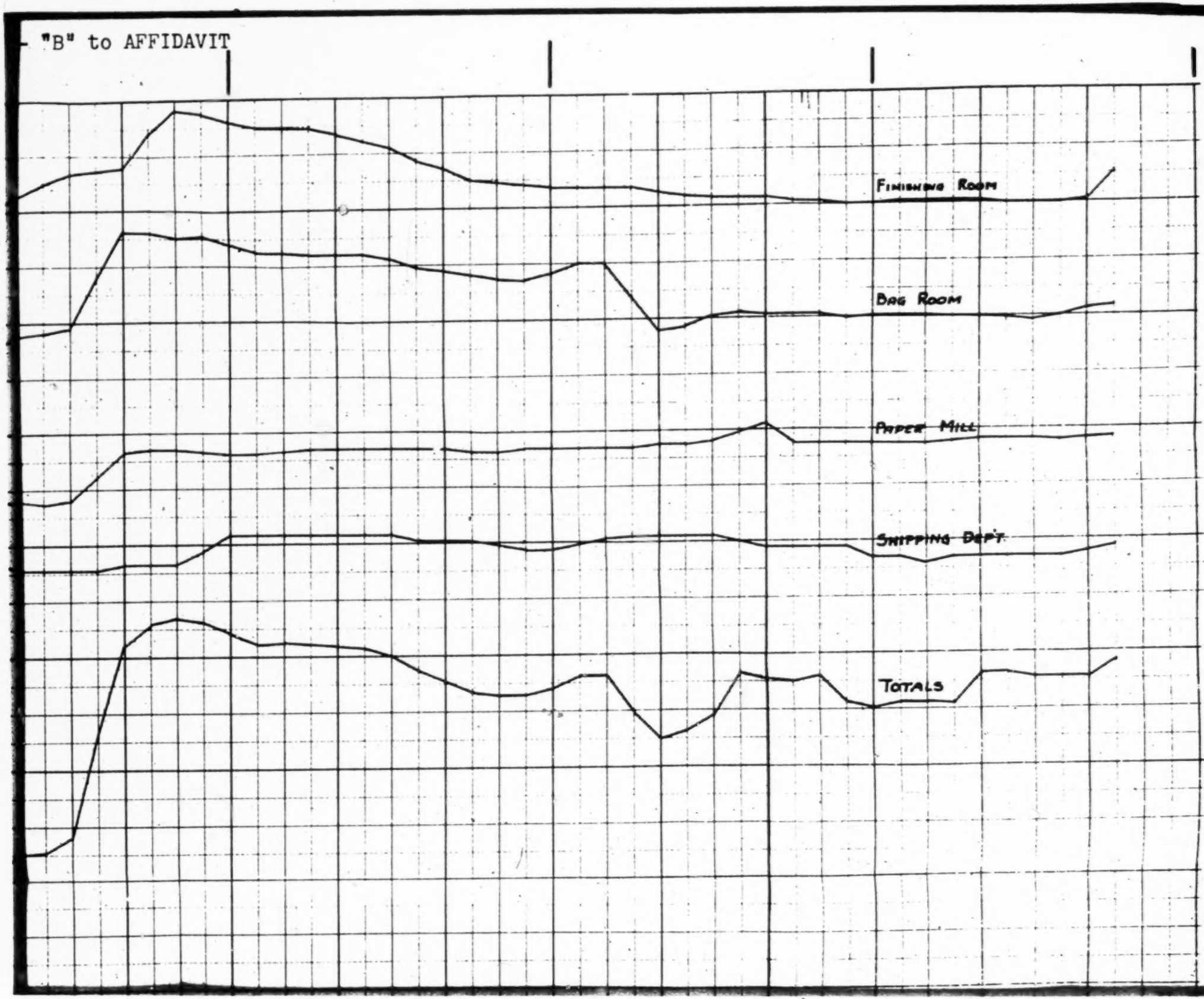
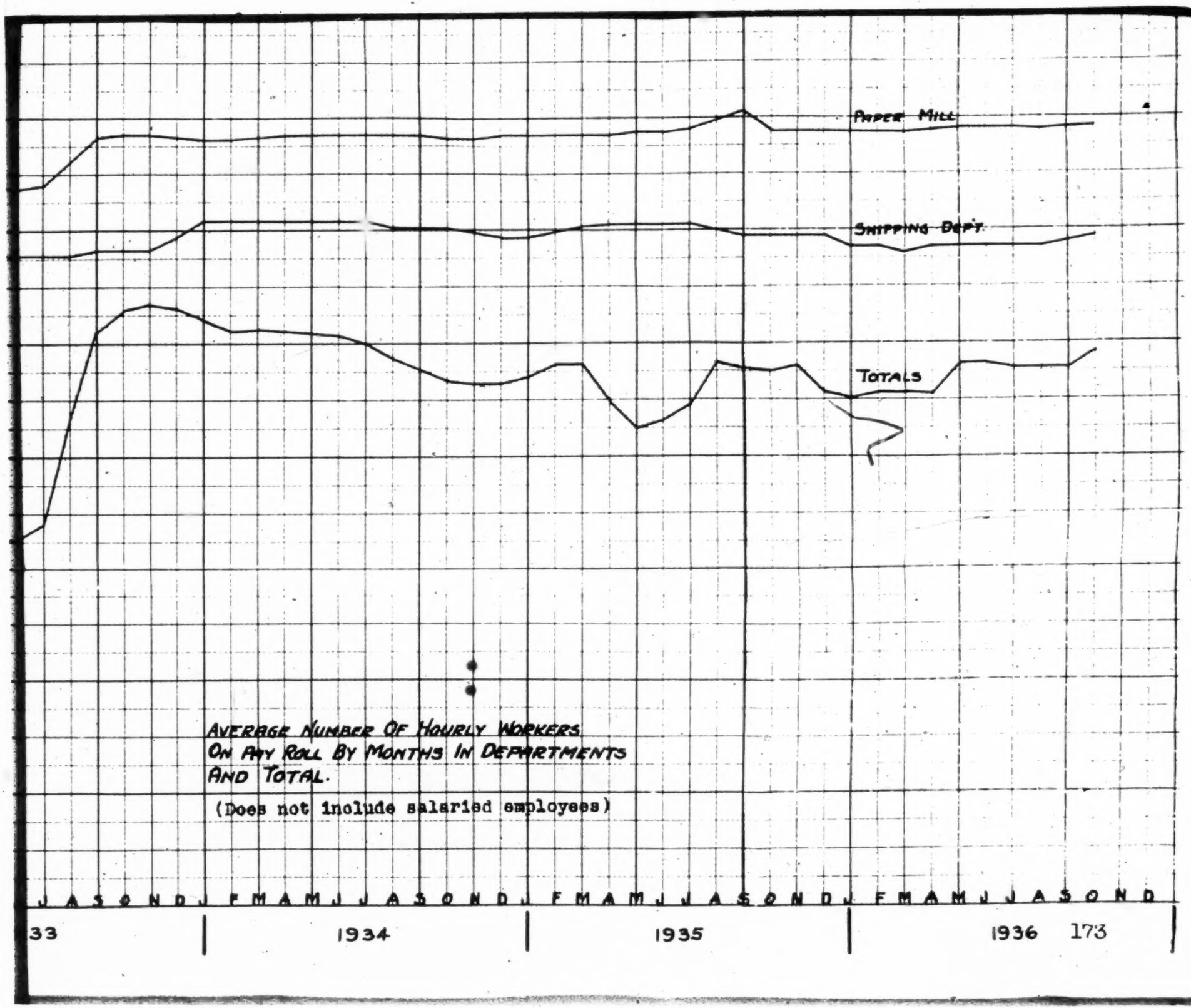
"B" to AFFIDAVIT




PAPER MILL
SHIPPING DEPT.
TOTALS
AVERAGE NUMBER OF HOURLY WORKERS
ON ANY ROLL BY MONTHS IN DEPARTMENTS
AND TOTAL.
(Does not include salaried employees)
J A S O N D J F M A M J J A S O N D J F M A M J J A S O N D J F M A M J J A S O N D
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1934
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1936

[fol. 174] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF HERBERT S. CRAIGMILE

Goodyear Tire and Rubber Company

My name is Herbert S. Craigmile. I am Personnel Manager of Goodyear Tire and Rubber Company. I have made investigation of its books and records as to employment, payrolls, and other data referred to herein in connection with the application of the Alabama Unemployment Compensation Act.

This Company is engaged in the business of manufacturing automobile tires at its plant at Gadsden, Alabama. At the present time it is employing 1560 workers. The following is a schedule of employment at the plant, showing average number of employees during each month since the plant began operation in August, 1929:

Employees per Month

	1929	1930	1931	1932	1933	1934	1935	1936
Jan.	...	1,087	960	829	686	771	928	849
Feb.	...	1,076	980	821	650	818	966	857
Mar.	...	998	1,029	815	638	836	971	941
Apr.	...	1,022	1,042	751	641	884	957	1,030
May	...	1,014	1,043	748	675	891	983	1,163
June	...	996	1,035	748	787	888	1,000	1,298
July	...	942	1,029	743	895	901	1,006	1,452
Aug.	1,195	911	1,021	736	872	846	986	1,549
Sept.	1,089	887	970	762	758	824	967	1,560
Oct.	1,035	849	924	759	720	817	883	...
Nov.	1,000	854	853	742	715	819	846	...
Dec.	957	863	779	734	716	872	840	...

Aside from the general drop in employment in the years 1932, 1933 and 1934, due to the general depression, employ-
[fol. 175] ment at the plant varies seasonally to a moderate extent, due to seasonal fluctuation in demand for the product.

An approximate schedule of the contributions to the Unemployment Insurance Compensation Fund which would have been made by the company and its employees at the schedules provided by the Act had the Act been applicable during the period shown is attached hereto marked Schedule A. This schedule shows that total contributions by the Company during a nine year period would have amounted to $246,000.00, and its employees would have paid during the same period $108,700.00, creating a total fund of $354,-700.00.

The total number of employees who left the service of the company for any reason, from January, 1930 through September, 1936, are shown by the following table:

	Voluntary Quits	Total Exits
1930	452	835
1931	176	483
1932	43	192
1933	49	303
1934	53	160
1935	74	270
1936	135	218

[fol. 176] Analysis has been made, by actual inquiry and investigation in approximately 131 individual cases, selected at random, of the cause and purpose of withdrawal from the company's employment, for the purpose of estimating the proportionate number and percentage of employees who would have been eligible for benefits, had the act been in operation since 1930.

While in my opinion there can be no exact computation of the amount of benefits which would have been payable, because of necessarily variant factors determining eligibility, involving every possibility of the employees' previous earnings and employment and subsequent disposition of his time and energy, the attached tables, marked Schedule B, Schedule C, Schedule D, are constructive applications of the benefit provisions of the Act to former employees of this company which present an approximate picture of what would have happened, based on the various assumptions stated.

In each calculation doubts have been resolved in favor of greater or maximum benefits.

The opinion as to the ratio of eligibles is based upon the study of the representative group of 131 actual exits. The further assumptions stated are explained in the tables.

A large percentage of the labor at this plant came from the surrounding rural territory. Many of the employees continue to reside upon farms, which continue to re-absorb a substantial proportion of the exits.

[fol. 177] It is, moreover, to be noted that the period reflected in the attached statements covers the period of the greatest and most prolonged depression of modern times, and can not be regarded as a normal test for unemploy-

ment to be expected for the period beginning October 1, 1938.

This Company's policies as to work and employment and their effect upon the life and welfare of the community have the approval of the city government and civic organizations in the area. Although necessarily dependent upon the current market for the product and therefore subject to some ebb and flow incident to the operation of the competitive American system of industry, the curtailment of employee personnel to adjust output to demand is not excessive nor too great for the area to absorb.

In the opinion of affiant, based on his knowledge of the facts, the by-products or indirect results of operation of the plant in the area have, even during the depth of the depression, more than supported employment in excess of the number of exits from the plant at any time seeking employment.

In the opinion of affiant, based on market studies and the business forecast of the management, the total and range of exits at this plant to be anticipated in the future will be materially less than has been the record during the depression period.

Herbert S. Craigmile.

Sworn to and subscribed before me, this 28th day of October, 1936.

Joseph H. Johnson, Notary Public.

[fol. 178] SCHEDULE "A" TO AFFIDAVIT

Estimated Contributions

(Assuming Act in Effect Starting January 1930)

Goodyear—Gadsden

		Total Payroll	Rate	Total Contributions to Fund
	1930	$1,047,363	1.9%	19,900
	1931	1,030,559	2.8	28,800
	1932	698,730	3.7	25,800
	1933	674,979	3.7	25,000
	1934	911,050	3.7	33,700
	1935	1,019,879	3.7	37,700
Approx.	1936	1,895,000	4.0	75,800
Est.	1937	1,800,000	3.0	54,000
Est.	1938	1,800,000	3.0	54,000
	Total 1930–1938			$354,700

Schedule "A" to Affidavit—Continued

		Employer Contributions	Employee Contributions
	1930	9,400	10,500
	1931	18,500	10,300
	1932	18,800	7,000
	1933	18,300	6,700
	1934	24,600	9,100
	1935	27,500	10,200
Approx.	1936	56,900	18,900
Est.	1937	36,000	18,000
Est.	1938	36,000	18,000
	Total	$246,000	$108,700

[fol. 179] SCHEDULE "B" TO AFFIDAVIT

Total Exits and Those Estimated to be Eligible for Benefits

(Goodyear—Gadsden)

		(1) Total Exits	(2) Excluding for known disqualifying conditions (100%–40%)	(3) Est. Eligible Exits (30%)
	1930	835	500	250
	1931	483	290	145
	1932	192	115	58
	1933	303	182	91
	1934	160	96	48
	1935	270	162	81
Approx.	1936	320	193	97
Est.	1937	375	225	113
Est.	1938	275	225	113

Col. (1) Exits for all causes.

Col. (2) The analysis of 131 exits indicates on the face of the known facts that not less than 40% of the total exits are under conditions subsequent which make them ineligible for current benefits under the Act. These known facts include no further investigation as to re-employment, part time re-employment, return to class of farm worker, study as to duration of previous employment. Applying an estimated factor for these unknown conditions, it is estimated that the number shown in Col. (2) would be reduced to 30%, as shown in Col. (3).

Col. (3) Estimated exits remaining eligible after deducting 40% from total exits for known percentage disqualifications disclosed by study of 131 exits, it is estimated that, on the average, a further 30% of the total would be ineligible because of re-employment, transfer to ineligible employment, part time employment, removal from the State, failure to register for re-employment, or to take employment offered, etc.; thus leaving a net total of 30% of total exits eligible for benefits.

[fol. 180] SCHEDULE "C" TO AFFIDAVIT

Weekly Earnings and Estimated Weekly Benefits

(Goodyear—Gadsden)

		Monthly Earnings	*Weekly Earnings	Maximum Weekly Benefits (50%)
	1930	$91.20	$21.05	$10.52
	1931	88.30	20.40	10.20
	1932	75.80	17.50	8.75
	1933	77.00	17.80	8.90
	1934	89.60	20.70	10.35
	1935	90.20	20.80	10.40
Approx.	1936	123.00	28.40	14.20
Est.	1937	120.00	27.70	13.85
Est.	1938	120.00	27.70	13.85

* Monthly earnings divided by 4-1/3 weeks.

[fol. 181] SCHEDULE "D" TO AFFIDAVIT

Estimated Unemployment Benefits to Former Employees Based on Various Assumptions

(Goodyear—Gadsden)

		(1) Maximum benefits possible applied to total exits	(2) Benefits on total exits for 17 weeks	(3) Benefits based on 60% of total exits. See Sch. B, Col. (2)	(4) Est. Actual Benefits based on 30% of total exits. See Sch. B, Col. (3)
	1932	$32,500	$29,400	$17,600	$8,800
	1933	58,820	46,350	27,800	13,900
	1934	38,420	27,200	16,300	8,150
	1935	70,800	48,200	28,900	14,450
Approx.	1936	112,000	76,100	45,700	22,850
Est.	1937	131,200	89,300	53,600	26,800
Est.	1938	131,200	89,300	53,600	26,800
Excess (or deficiency) of fund—$354,700 (See Sch. A):		574,940	405,850	243,500	121,750
		(def.) $220,240	(def.) 51,150	(excess) 111,200	(excess) 232,950

Col. (1) Based on total exits, at 50% of average weekly wage and assuming all the unemployed were eligible to participate in maximum benefits on the basis that the Act was effective January 1, 1930, and that the unemployed exits all started their employment at this time.

Col. (2) Based on total exits as in Col. (1) but assuming the unemployment period averages 17 weeks.

Col. (4) It is estimated that the percent of total eligibles to total exits would not reach 30% were it not for the fact that the necessary effect of the Act is to put a premium upon abstention from employment during the running of the benefit.

[fol. 182] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF RICHARD H. CHILDERS

Moore-Handley Hardware Company

My name is Richard H. Childers. I am Auditor of Moore-Handley Hardware Company, an Alabama corporation which has conducted a wholesale hardware business located at Birmingham for over fifty years. The Company has been in continuous operation of its business without cessation during this period. During 1935 its employees ranged from a low of 364 in January, 1935, to 388 on December 31, 1935.

I have examined and am familiar with the Company's records and statistics relating to its payrolls, employment, exits from employment, and re-employment, with particular reference to the years 1933, 1934 and 1935; also its payrolls for the two years prior to 1933; and also the records neces-

sary to the exact determination of the original date of continuous employment of those who left the service of the company during 1933, 1934 and 1935. This study was made for the purpose of making a constructive application of the Alabama Unemployment Compensation Act to the company based on the years 1933, 1934 and 1935.

The problem of unemployment has borne nominally upon this Company because of the fact of its continuous opera- [fol. 183] tions and the adoption of a policy during periods of recession in gross sales to continue as far as practicable its regular employee personnel. Thus during the most severe test to which the Company in its entire history has been subjected, namely the low spot in the depression beginning in 1929, the recession in the number of employees did not follow the recession in the Company's sales. This is illustrated by the following comparison:

	1927	1932	Decrease
Sales	$7,720,480.24	$2,931,897.27	62%
Number of Employees (Dec.)	380	290	24%

In order to apply constructively the Act to the three actual years selected for analysis (1933-34-35), I have checked the records as to each of the regular employees who left the service for any cause during the years stated, numbering 29 for 1933, 24 for 1934, and 45 for 1935, and have ascertained in each case the circumstances under which the employee left the service. By ascertainment of the actual figures in each case, it has been practicable to determine with a reasonable degree of accuracy the extent to which these former employees would have become eligible under the definition of the Act to receive standard or extended benefits under its terms. In each case where doubt existed as to the amount of the benefit which would have been payable, we have estimated the benefit at the maximum permitted under the Act. In order to determine whether or [fol. 184] not the employees leaving the service would be entitled to extended benefits, the duration of their service with the company was checked and extended compensation was allowed on the maximum basis ($15 per week) for the extended weeks of service contemplated by the Act.

The result of this analysis is set out on the following table:

Total weeks of benefit payable for unemployment starting in		Total benefits
1933	255	3,825.00
1934	159	2,385.00
1935	209	3,135.00

If it be assumed that approaching 1933 the Act had been in effect for five years, and that the average rate of contributions applicable to industry as a whole were then applicable (3% against the employer and 1% against the employee), the following would show the accumulation in the fund and the excess of contributions over benefits payable to the former employees of this Company, based upon the assumption of eligible unemployment in all cases where not [fol. 185] specifically excluded by the analysis of our records:

Year	Net payroll on which contributions payable	Total contributions at 4%	Excess over benefits
1933	$466,559.10	$18,662.36	$14,837.36
1934	568,362.23	22,734.49	20,349.49
1935	621,216.03	24,848.64	21,713.64
		$66,245.49	$56,900.49

I have considered the matter of the cost of the necessary clerical service and records to keep and compile the statistics and make the reports which would be required of the company under the administration of the Act. In my opinion it would be not less than $2,000 annually. The keeping of the necessary records and the making of the necessary reports contemplated by the rules promulgated by the Commission will in my opinion require the full time services of an accountant or statistician of good ability, and in my opinion the estimate of $2,000 is conservative as applied to businesses employing from 200 to 500 employees.

The matter of the bearing of the Unemployment Compensation Act upon the policy of this Company has been discussed by the management, and I am able to state that on account of the duplication of cost which would be involved in the compulsory contribution to the compensation fund, with no tangible or appreciable benefit to the com- [fol. 186] pany, it would be necessary for the company to curtail its payrolls in periods of diminished activity rather than stand the expense of making sacrifices to continue the employment in accordance with the policy which has been heretofore established.

This Company's ad valorem, income and franchise and merchants license taxes, constituting all of the taxes paid by the company for the support of the State, County and City governments, amounted to an aggregate of $143,831.81 for the three years, and the company's tax for the support of the federal government (income and capital stock taxes) over the same period, 1933-1935, amounted to an aggregate of $56,653.80. Had the full average levy made against employers subject to the Act in the aggregate (3% during and after 1941) applied to the company's payrolls during 1933, 1934 and 1935, the amount of the aggregate contribution for the three years would have been $44,164.12, which added to the employee levy of 1% would have resulted in a total impost against this unit of industry for one single social objective amounting to 46% of its total direct contribution for all functions and objectives of State, County and City governments and 117% of its total direct contribution for all functions and objectives of the federal government.

Richard H. Childers.

Sworn to and subscribed before me this 17th day of November, 1936.

Minnie Daniel, Notary Public, Jefferson County, Alabama.

[fol. 187] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF ALEX C. WELLMAN

Protective Life Insurance Company

My name is Alex C. Wellman. I am Vice President of Protective Life Insurance Company. The home office of the Company is in Birmingham, Alabama.

I am an actuary, and am accustomed to the compilation and analysis of statistics and statistical data. I have been engaged in performing the functions of actuary and statistician for eleven years. I have made investigation of the books and records as to employment, payrolls and other data referred to herein in connection with the application of the Alabama Unemployment Compensation Act.

Assuming that the benefits to be paid under the Act to employees subject to the Act who may become eligible

under its terms are deferred until approximately October 1, 1938, I am of the opinion, based on my information of the available statistical data and my analysis of the conditions subject to which the benefits are payable, that it is not practicable to arrive at even an approximate accurate conclusion as to the amount of withdrawals which will be made by eligibles under the Act.

My reason for the conclusion stated is, first of all, that the amount of unemployment cannot be projected; that [fol. 188] basic data is lacking for the study of unemployment, its origin and duration as applied to individual employees, and that there is such a multiplicity of variables involved in the individual equation of unemployment, that no estimate can be projected two years into the future.

Even if unemployment data were available for any given period it would not be adequate for actuarial calculations to apply to future periods. The impact of unemployment is more acute on the down curve of a general depression. General depressions are cyclical and unpredictable both as to their severity and duration. Apart from the pool of floating unemployed characteristic of industry in Alabama, in the case of most of the employers reduction of personnel and consequent unemployment is usually small or negligible, succeeded by unpredictable periods of general unemployment. Funds that might be necessary and sufficient for what might be termed the normal periods of unemployment or referable to the floating pool of unemployed would be wholly inadequate on any basis of limitation for a general and continued period of depression, or to meet the adjustment of sharp changes in employment policy such as might result from the adoption of changed hours of service and radical increases in personnel such as resulted from the inauguration of the President's agreement and NRA require- [fol. 189] ments. For these reasons, fully applicable to employers and employees in Alabama, it can be asserted that there is no method of estimating the amount of reserves that would be necessary to be built up to meet adequately a general period of unemployment.

Even if basic statistical data were available as to withdrawals or average withdrawals in particular plants or in the aggregate in the State, it would not be practicable to set up or predict an average prospective unemployment period applied to the number for the time being unemployed, or even to guess remotely what steps individuals

would take to obtain employment or how individuals would employ their time.

During the general depression a large number of unemployed have had recourse to their original homes or vicinities on farms. This tendency to make use of the farm as a cushion to absorb unemployment is illustrated by the increase in the number of farms in Alabama from 257,395, as reported by the United States Census for 1930, to 273,455 in the year 1935. No one can foresee what effect the Alabama Unemployment Compensation Act would have upon this tendency to fall back upon the farms in periods of unemployment.

Moreover, each condition prescribed by the Alabama Unemployment Compensation Act for the receipt of benefits under the Act has elements that are unascertainable and [fol. 190] unpredictable, such, for instance, as the following:

(1) The full time weekly wage of the person becoming unemployed. The "full time weekly wage", as defined by the Act, does not correspond with the wages actually paid the particular employee upon which his and the employer's taxes were based. The Act computes the full time wage on a constructive basis by expanding his average unit wage to full time employment.

(2) It cannot be foreseen how many employed persons, prior to their unemployment, will have been engaged for the necessary number of weeks to qualify for initial or extended benefits.

(3) It cannot be foreseen whether how many employed persons would supplement their unemployment by partial employment.

(4) It cannot be foreseen whether such employed persons, or how many of them, would become farm employees or otherwise become ineligible for benefits under the fund.

[fol. 191] It is practicable to apply the Act constructively to some individual plants or businesses, predicated, however, upon stated assumptions, and upon past record of employment and payrolls. Thus, in the case of the Protective Life Insurance Company, practically no unemployment has resulted which would have made former employees of the Company eligible for the receipt of benefits under the

Act had it been in effect during the period 1930 to date. This will be illustrated by the following table showing the number of employees by months for the six years ending December 31, 1935.

Number of Employees by Months for Six Years Ending December 31, 1935

	1930	1931	1932	1933	1934	1935
January	68	76	81	88	96	91
February	67	79	82	90	93	90
March	69	85	85	96	97	91
April	67	83	84	97	96	93
May	64	85	85	95	96	95
June	67	85	82	93	94	93
July	64	85	82	94	94	96
August	68	86	84	97	98	89
[fol. 192]						
September	75	90	84	96	97	91
October	74	85	85	95	95	93
November	77	81	85	97	94	93
December	76	81	84	95	93	93

While this table shows the net number and does not indicate the number which at any given time left the employment, the statement may be made that the number leaving the employment over the period stated, except as a result of death or under circumstances which would not have made them eligible for benefits under the fund, is nominal if in fact any single employee would have become eligible during the entire period.

An analysis of these figures and of the facts under which this Company's personnel changes from time to time makes it clear that the application of the Alabama Unemployment Compensation Act would result in no tangible or appreciable distributions to employees or former employees of this Company, and such benefit as the Company might experience in return for its contributions to the fund would be such only as would be experienced by the public as a [fol. 193] whole.

Alex C. Wellman.

Sworn to and subscribed before me, this 17th day of October, 1936.

L. J. Caran, Notary Public.

[fol. 194] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF HERBERT S. SALMON

Bituminous Coal Industry

My name is Herbert S. Salmon. I have for several years represented the entire commercial bituminous coal industry or substantial sections of the industry in Alabama by reason of official connection with the Divisional Coal Code Authority under the National Recovery Administration, having been designated and acted as Presidential Member of the Divisional Code Authority during the life of the NRA Code, and having been Chairman of the Bituminous Coal Producers Board under the so-called Guffey Act until those measures were annulled by the United States Supreme Court. Since the annulment of the latter I have been President of Alabama Coals, Inc., an agency organized by certain of the coal producers in Alabama in accordance with the decision of the Supreme Court in the Appalachian Coals Case.

As a result of reports compiled from the various producers of coal in Alabama during the period of the NRA Code and Guffey Act administration, I am generally familiar with the statistical data of the industry in Alabama. Much data is available to me through the reports made by the units in the industry to the federal authorities and to the district boards mentioned above; from official or semi-official reports to the State Mine Inspector of Alabama; from reports issued by the U. S. Bureau of Mines and from reports issued by the U. S. Department of Labor.

[fol. 195] Based on this data I am able to give the annual production of coal in Alabama by tons for 1923-34; the average days operated by the Alabama mines for 1923-34; the increase or decrease of employees for 1923-34; and to estimate therefrom total wages for the same period. This data is set out in Table I.

Table I.—Statistical Data, Bituminous Coal Industry of Alabama

Year	Annual production (tons)	Days operated	Average number employees	Increase or decrease in employees each year	
				Inc.	Dec.
1934	9,142,000	185	18,851	614	
1933	8,700,000	148	18,237	....	2206
1932	7,857,000	107	20,443	....	2530
1931	11,999,000	136	22,973	....	1420
1930	15,570,000	189	24,388	....	815
1929	17,944,000	231	25,208	....	500
1928	17,621,000	222	25,708	....	1907
1927	19,765,000	231	27,615	270	....
1926	21,000,000	266	27,345	248	....
1925	20,004,000	246	27,097	....	859
1924	19,130,000	220	27,956	....	2079

I am able to say that no data exists from which an accurate constructive application of the Alabama Unemployment Compensation Act could be applied even to past years, for the reason that no record is available as to the number of employees who left the service of the respective employers or the conditions accompanying their leaving or the amount of their "full time weekly wage" as provided by the Act, at their last employment, or what credits if other-
[fol. 196] wise eligible would have applied against the $15 per week maximum compensation, or whether they would have been eligible for the full sixteen weeks of the maximum initial benefit period, or for any extended benefits. These uncertainties prevent accurate application of the Act to a past period without involving enormous and in fact impracticable research as to each employee leaving the service, and such application is no less impracticable for the period beginning two years hence, as contemplated by the Act.

Nevertheless there can be ascertained with reasonable accuracy the amount of the contributions which would have been paid by the industry had the Act been in force for the period 1923 through 1934.

If net increase or decrease in employment as applied to the industry as a whole be regarded as the test of eligibility to benefits, and if it be assumed that the net recession in the number of employees indicated eligibility for the entire number for the full initial period of sixteen weeks and at the maximum of $15 per week, then the withdrawals of benefits from the fund can be calculated approximately. The result is as set out below in Table II, assuming a contribution equal to the schedule provided by the Act, and

applying for the fifth year the average minimum of 3% levied upon coal mine employers in the aggregate subject to the Act plus a flat 1% levied upon the employees.

[fol. 197] Table II.—Estimated Wages, Taxes and Payments

Year	Increase or decrease in employees each year: Inc.	Increase or decrease in employees each year: Dec.	Total wages	Tax	Payments based on $15 per week for 16 weeks
1934	614	....	$12,762,000	$510,480	....
1933	....	2206	6,451,000	258,040	529,440
1932	....	2530	6,561,000	262,440	607,200
1931	....	1420	11,277,000	451,080	340,800
1930	....	815	17,241,000	689,640	195,600
1929	....	500	22,535,000	901,400	120,000
1928	....	1907	22,828,000	913,120	456,080
1927	270	....	26,409,000	1,056,360	....
1926	248	....	30,114,000	1,204,560	....
1925	....	859	27,730,000	1,026,010	206,160
1924	....	2079	25,707,000	719,796	498,960
1923	1866	....	28,220,000	536,180	....
				8,529,106	2,954,240
Excess Collections					5,574,866
				$8,529,106	$8,529,106

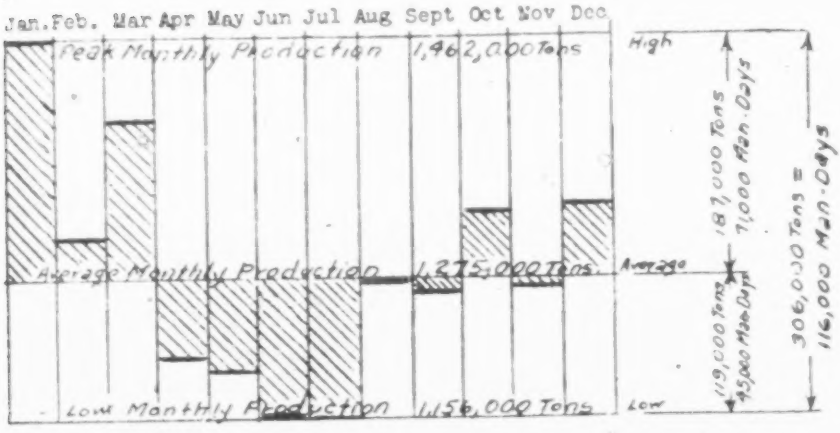
[fol. 198] As stated above, it cannot be assumed that this accurately portrays the full number of exits which might have become eligible to benefits during this period. On the contrary, it may well be that even if the number of exits be increased as not being accurately reflected in the net increase or decrease in employment from year to year, it is probable that a large number of the exits avail themselves of farm work and farm maintenance known to exist generally throughout the coal field. A large number of the miners in Alabama have been recruited from the farm population in the general vicinity of the mines, and make use of these farms as bases during times of low employment. This is particularly true as applied to the seasonal reduction in personnel or working time applicable to the coal industry; but this assertion is not intended to modify the statement first above made that it is obviously impracticable to compile an accurate constructive application of the operation of the Act. The above table does not carry forward any computation for extended allowance of benefits beyond the sixteen weeks period conditionally established by the Act. If it were assumed that the same number assumed to be eligible for fifteen weeks in the above table were in fact eligible for an extended term of ten weeks under the extended [fol. 199] provisions of the Act at the full allowance of $15

per week, there would be an additional amount of benefits withdrawn of $1,839,000, which would reduce the excess in contributions over collections (benefits) during the period 1923-34, to $3,735,866.

The seasonal nature of coal production in Alabama is shown by the average production per month over the period 1921-35 set out on the following graph:

Graph Showing Average Monthly Production Alabama Coal Mines

Fifteen Year Period 1921-1935



During the past decade the number of employees in the Alabama coal industry has been reduced on account of decreasing production from approximately 30,000 to approximately 18,000. This shrinkage in employees would have [fol. 200] been even greater if there was not an attempt on part of employers in the industry in Alabama to spread the work among a larger number of employees than were actually required for economical operation in order to give a greater number at least partial employment. To illustrate by comparison the number of employees being held in the industry in Alabama, the Bureau of Mines for 1934 states that in Alabama the average tons per day per man was 2.62; in West Kentucky, one of Alabama's most vigorous competitors, the average tons per day per man is 5.11. In other words, twice as many men are being used in Alabama to mine an equivalent tonnage as are used in West Kentucky. While this is partially due to the great natural handicaps and disadvantages of production, the spreading

of work among a greater number of employees also contributes.

If this Act becomes and continues operative, there is no doubt that the industry will be forced to even greater mechanization. This will mean that machinery upon which no payroll tax is paid will be substituted for man power. The saving in contribution to the unemployment fund will to a large measure offset the capital investment in mechanization. It is obvious that such a program, which would be forced upon the industry if it is to remain in competition, will shift the burden of responsibility for employment of those now working in the industry upon the State. It is also obvious that such a program will reduce the contribution to the unemployment fund which would be represented by 4% of the wages that those employees would have earned.

[fol. 201] The amount of the contribution annually by the coal industry, exclusive of employee contributions, based on a production of 9,142,000 tons in 1934 (which is to be compared with the peak of 21,000,000 tons in 1926) would amount to $382,860 annually, assuming the application of the aggregate average 3% rate to the industry. This contribution amounts to 4.2¢ per ton. All cost and realization figures covering periods of 1933, 1934 and 1935, for Alabama commercial mines, furnished under NRA and the Guffey Act administrations, showed that Alabama producers operated at a loss varying from 3 to 6 cents per ton, exclusive of financing charges. This loss was due to high cost and inability to get a compensatory realization on account of competition of other forms of fuel and energy. To add another 4.2 cents to the cost simply means that Alabama coal is placed at a still greater disadvantage in its struggle for existence with its practically laborless competitors, natural gas, fuel oil and hydro electricity. Further loss in production would ensue and further unemployment. These competitive industries would contribute very little to an unemployment fund.

The reports furnished under NRA and referred to above showed further that the coal industry was assessed for the cost of state and local government operation, exclusive of [fol. 202] income taxes, a total of 5.92 cents per ton. The tonnage tax has since been reduced 1¢. On the basis of tax payment of 4.92 cents per ton for taxes other than the tax

contemplated in this Act the amount of such tax payments on the 1934 basis of production would be $449,790.

Herbert S. Salmon.

Sworn to and subscribed before me, this 17th day of October, 1936.

L. J. Caran, Notary Public.

[fol. 203] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF J. M. JACKSON, JR.

Alabama Water Service Company

My name is J. M. Jackson, Jr. I am Vice President and Treasurer of Alabama Water Service Company. I have made investigation of its books and records as to employment, payrolls and other data referred to herein in connection with the application of the Alabama Unemployment Compensation Act.

The Company is engaged in the operation of waterworks and other utilities within the State of Alabama. A schedule of its various operations within the State of Alabama since January 1, 1930, is shown on Exhibit A, attached hereto.

The total payroll of the company in all its operations during each of the years 1930 through August, 1936, and the total contribution which would have been made by the company and its employees had the Alabama Unemployment Compensation Act been in effect as of January 1, 1930, are shown by the following table:

	Total Payroll	Rate of Contribution	Total Contributions
1930	$148,109.38	1.9	$2,814.08
1931	140,111.38	2.8	3,923.12
1932	121,438.49	3.7	4,493.22
1933	119,497.56	3.7	4,421.41
1934	128,805.70	3.7	4,765.81
1935	168,589.84	3.7	6,237.82
1936	145,927.66	3.7	5,399.32
	$972,480.01		$32,054.78

[fol. 204] I have examined the company's records for the period from January 1, 1930, to date with reference to every employee who has for any reason left the service of the company during that time, for the purpose of making a constructive application of the Alabama Unemployment Compensation Act to the company assuming the Act to have beeen in operation during the period. The total number of employees who have left the service of the company for any reason during this period is sixty nine.

The total number of employees on the payroll of the company during each month of the years involved is shown by the table attached hereto marked Exhibit B. Changes in the number of employees caused by the sale or purchase of plants during the period are explained on Exhibit B.

With reference to each of the sixty nine employees who have left the service of the company during the period (excluding those who left the service by reason of sale of plants, all of whom, so far as is known, continued in the service under the operations by the purchasers), I have ascertained the actual weekly wages paid, the date when service terminated, and have calculated the benefits which would have been payable to such employees under the Act, assuming that such employees would have been entitled to the maximum number of weeks of benefit. In many instances I have been able to ascertain what happened to these employees after leaving the service of this company and in calculating the total benefits which would have been [fol. 205] payable to former employees of this company during this period, I have excluded those former employees whom I know would have been ineligible for benefits by reason of having obtained other employment or for other reason.

Of the sixty nine employees who left the service during this period, 4 died, 25 resigned or voluntarily quit, 3 were transferred to affiliated companies, 36 were discontinued, and 1 left on account of illness. Of the 36 employees who were discontinued, 14 were discharged for cause.

Excluding from benefits each employee whom I ascertained obtained other employment after leaving the company, and excluding those who voluntarily resigned in order to get married and keep house, assuming payment for the maximum number of weeks allowed under the Act (26), the total benefits which would have been payable during the

period would have amounted to $6,481.47. Deducting this from the total contributions which would have been paid into the fund by the company and its employees, as shown above, the unexpended balance of the fund contributed by the company and its employees would have been $25,573.31.

Aside from construction forces, directly employed in new construction, my opinion is that the foregoing reflects a fair average picture of the application of the Act to water and electric utilities within the State of Alabama. The turn-over is extremely small, the reduction of personnel is ordinarily impracticable, even during times of depression. [fol. 206] The period to which the above application is constructively applied represents the period of greatest depression in the history of the utilities and in my opinion represents a period which would show maximum theoretical benefits under the Act, if any benefits are to be regarded as discernible under the facts stated. Comparison of the contributions and maximum theoretical benefits makes plain as to this Company (and utilities generally in the State) that the establishment of individual company plans or reserves in trust would provide much greater benefits and much greater assurance of unemployment relief. There is no competition as between taxable utilities in Alabama, or as between utilities within and without the state, such as might give rise to an advantage from uniform imposition of the levy or tax.

J. M. Jackson, Jr.

Sworn to and subscribed before me, this 17th day of November, 1936.

L. J. Caran, Notary Public.

[fol. 207] EXHIBIT "A" TO AFFIDAVIT

List of Water and Electric Plants Operated During the Period 1-1-30 to 10-31-36 by Alabama Water Service Company

Water Plants

Abbeville
Albertville
Andalusia
Attalla
Bay Minette
Bessemer
Brantley
Bridgeport
Carbon Hill
Coffee Springs (Acq. 3-1-31)
Collinsville
Cordova (Acquired 4-1-31)
Decatur
Dora
Eutaw
Fort Payne
Geneva
Greensboro
Headland
Irondale
Jasper
Leeds
Monroeville
Newton
Oneonta
Ozark
Pinckard
Prichard (Chickasaw)—(Acquired 8-1-36)
Russellville
Samson (Acquired 6-1-35)
Sheffield (Tuscumbia)—(Sold 6-15-36)
Wetumpka
York
Boaz
Brighton
Lipscomb
Parrish
Anniston (Sold 4-17-35)
Girard (Sold 7-20-32)

Electric Plants *

Andalusia
Ariton
Banks
Belleville
Brantley
Brundidge
Clio
Dozier
Elba
Evergreen
Excel
Frisco City
Gantt
Glenwood
Goshen
Kinston
Luverne
Milo
Opp
Red Level
Repton
River Falls
Samson
Troy

* All acquired 6-1-35.

[fol. 208] EXHIBIT "B" TO AFFIDAVIT

Total Number of Employees by Months, Alabama Water Service Co.

	1930	1931	1932	1933	1934	1935	1936
Jan.	106	112	101	96	97	97	130
Feb.	106	107	102	96	97	97	134
Mar.	108	109	101	96	97	97	134
Apr.	106	116	101	96	97	97	134
May	105	110	101	96	97	89(a)	134
June	104	106	101	96	97	130(b)	134
July	103	107	101	96	97	130	131(c)
Aug.	103	102	96(d)	96	97	130	131
Sept.	103	102	96	96	97	130	...
Oct.	135(e)	102	96	96	97	130	...
Nov.	120	102	96	96	97	130	...
Dec.	116	102	96	96	97	130	...

(a) Anniston Sold (8 employees).
(b) Alabama Utilities Co. Purchased (36 employees).
(c) Sheffield Sold (6 employees).
(d) Girard Sold (3 employees).
(e) Increase due to temporary construction work.

[fol. 209] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF F. W. GIST FOR DEFENDANT—Filed November 18, 1936

Before me, the undersigned authority, personally appeared F. W. Gist, who, being by me first duly sworn, did say upon his oath, that:

I am economic adviser to the Commissioner of Agriculture of the State of Alabama, and have held such position since February 1, 1936. For thirty years prior thereto, I was an Agricultural Statistician of the Department of Agriculture of the United States of America, and from 1915 to 1936 I was stationed in and resided in Alabama and was constantly engaged in the study of and in the recording of the conditions concerning agricultural acreage, production and values in Alabama. This included studies of outside occupations of farmers and their income supplemental to that which they received from farms.

From December 1, 1927, to February 1, 1936, I worked under a co-operative agreement between the Agricultural Department of the United States and of the State of Alabama, and was entitled "State and Federal Agricultural Stati-cian" in Alabama. Under this arrangement, it was my duty to observe, study and record matters relating to trade

and industry as well as those relating to agriculture in Alabama and during those eight years I continuously did so.

All of my work in Alabama has required me to be and [fol. 210] keep informed of the census reports of the United States Government and I am familiar with them. Recently, at the request of the Attorney General of Alabama, I have examined and studied particularly those parts of the reports of the United States Census of 1930, relating to the gainful employment of the population of Alabama and the various classifications of Alabamians engaged therein, their wages, unemployment, and other matters which appeared to me to be relevant to the Alabama Unemployment Compensation Law, its application in Alabama and those parts of the population of Alabama that are affected by said law.

I have also studied such other material as is available to me touching this subject, notably the index numbers reporting employment of wage earners which are published and issued by the United States Department of Labor, and I have applied said index numbers to the figures of the census and have compiled certain attached figures as a result thereof.

In the attached four pages, I have accurately copied from said census reports and from the said Department of Labor reports all the figures and the accompanying statements shown in these pages as being from such reports. From my observation, study and experience in my official capacity, I have made such figures and drawn such conclusions as are stated in these pages as not being copied; to the best of my knowledge, information and belief, my figures and my conclusions, as stated in these pages, are true, and as accurately as is possible for me, I have there truly pictured the conditions of employment in Alabama trade and industry on January 1, 1930, as shown by the United States census and the changes therein since that date and the changes [fol. 211] in prospect therein up to 1941 as such prospects are indicated by the proper statistical use of said index numbers and census figures. Insofar as the prospects can be reasonably arrived at from the materials at hand and from my knowledge and experience as observer, student, compiler and reporter of information concerning such matters, the prospective changes in trade and industry in Alabama up to 1941 are accurately figured in said pages.

(Signed) F. W. Gist.

Subscribed and sworn to before me at Montgomery, this 16th day of November, 1936.

Witness my hand and seal.

(Signed) Florence Ferrell, Notary Public, Montgomery, Alabama. (Impression Seal.)

[fol. 212] EXHIBIT TO AFFIDAVIT

Trend of Employment in Alabama

The United States Bureau of Labor Statistics has published since 1932 index numbers of employment in all groups of endeavor in Alabama. While these index numbers are based on December, 1931, as representing 100, it is possible to change the base to 1929, and calculate, relative to the official figures, a series of index numbers from 1929 down to and including 1935. So calculated, those index numbers are as follows, excepting the year 1930, for the reason that that year was not materially different from 1929:

1929	100.0
1931	66.5
1932	61.9
1933	67.7
1934	71.1
1935	72.1

The United States Census of 1930 reported the number of persons gainfully employed in Alabama, and also the number of salary and wage earners. These are stated as follows:

Gainful Workers, Alabama, 1930

	Persons Engaged	Salary and Wage Earners
Agriculture	492,761	80,105
Forestry and Fishing	5,476	4,417
Mining	35,781	33,735
Manufacturing	185,681	130,034
Transportation	61,157	50,148
Trade	73,568	64,646
Public Service	12,914	12,914
Professional	39,657	35,968
Domestic	102,345	97,751
Clerical	31,321	31,321
Construction	10,075	9,956

The difference between the two columns of figures represents what may be called owners of business gainfully occupied but not receiving salaries or wages and therefore not subject to the Unemployment Insurance Act. In the case of agriculture the difference also includes numbers of farm families working without stipulated pay.

Certain types of workers are exempted from the operation of the Unemployment Insurance Act. These are enumerated in Section 2, Paragraph C. It is possible to determine these exemptions from the United States Census of Occupations except for those mentioned in Paragraph 4, under Paragraph G, designated as "Service performed by an individual in the employ of his son, daughter or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother". It is believed that such of these persons as might otherwise be subject to the Act are few in number and would not affect the total [fol. 213] sufficiently to materially change the proportion of those exempt to those subject to the Act. Those persons thus exempt, the number of whom may be definitely determined, are given below:

Agriculture	80,103
Manufacturing	317
Transportation	19,479
Trade	4,145
Public Service	12,914
Professional	22,789
Domestic	42,865
Total	182,612

Subtracting this total number specifically exempted from the total number of salary and wage earners, there are left 366,363 persons who would have been subject to the Act in 1930.

The Act further exempts all establishments employing less than eight persons. The proportionate number thus exempted will vary in the different groups but a reasonable average deduction for such exemption would be about 25%. Therefore, it appears that the number of persons employed on salary and wages in 1930 who would have been actually subject to the provisions of the Unemployment Insurance Act, was in round numbers, 276,000.

Using the index numbers on employment shown above, it is possible to calculate the number of wage earners which would have been so subject from 1931 to 1935, inclusive. These are shown as follows:

1931	184,000
1932	171,000
1933	187,000
1934	196,000
1935	199,000

From the reports of the United States Bureau of Labor Statistics we give below the average weekly wage and the average annual wage paid per person in Alabama in all groups of industrial employment for the years indicated:

Year	Average Weekly Wage	Average Annual Wage
1929	$18.27	$980.00
1931	16.53	808.00
1932	11.35	590.00
1933	11.95	621.00
1934	13.24	725.00
1935	14.76	767.00

The total wages paid, therefore, which would have been subject to the assessment of the premium for Unemployment Insurance would have been as follows:

[fol. 214]

1931	$148,672,000
1932	100,890,000
1933	118,027,000
1934	142,000,000
1935	152,633,000

A somewhat uncertain and yet a reasonable projection of persons employed can be applied to succeeding years, which may be stated as follows:

Year	Persons Employed	Annual Wage
1936	205,000	$795
1937	213,000	829
1938	221,000	855
1939	226,000	881
1940	234,000	907

The number of persons employed as given above is a continuation of the relative increase which occurred from 1932

to 1935. The weekly wage given, however, is an arbitrary addition of fifty cents per week to the average wage to 1935. Both these columns of figures are, of course, problematic, but, since they are used for the purpose of illustration as to the probable collections and probable benefits under the Unemployment Insurance Act, they may be accepted as reasonable. If they be so accepted, we can then set up probable figures as follows:

Year	Annual Wages	Premium	Total Collected
1936	$162,675,000	1.9	$3,689,000
1937	176,567,000	2.7	4,944,000
1938	188,956,000	3.7	6,991,000
1939	199,106,000	3.7	7,367,000
1940	212,238,000	3.7	7,853,000

If in 1941 there should be a recurrence of unemployment somewhat equivalent to the period we have just come through, and employment in the industrial groups under consideration should drop to, say 170,000, we would find Alabama with something like 64,000 unemployed persons who would be entitled to the benefits of this Act. Since under the Alabama Law those entitled to benefits would receive 50% of their former wage, and assuming that the 1940 wage as shown above would be taken, each person would be entitled to $8.63 per week for sixteen weeks, or $138.00 for the period. Thus it would require $8,832,000 out of the accumulated funds to pay these benefits. The total collections shown above would, therefore, maintain the purposes of the Act for three and a half years without giving consideration to any further collections during that period.

It is interesting to note from the trend indicated by the index numbers given above that an average of 36.33% of the persons employed in 1929 were unemployed during the period 1931 to 1935, inclusive. This indicates the severity of the depression through which we have passed. It indicates, as well, the need for insurance against unemployment, and also indicates the cost involved in such insurance [fol. 215] in a period of unemployment such as has been experienced during the years under consideration.

The trend of employment in industry as compared with the total number of persons gainfully occupied in Alabama from 1900 to 1935 may be stated as follows, the figures

being taken from the reports of the United States Census for the year indicated:

	Total Employed	Employed in Industry	Per Cent.
1900	763,188	149,238	19.5
1910	997,524	213,252	21.4
1920	908,216	278,624	30.7
1930	1,026,296	345,295	33.6
1935 (Est.)	1,029,000	230,699	24.3

The persons employed in industry shown above are those reported at each census as engaged in Mining, Manufacturing, Transportation, and Trade, and the total employed as given above includes all persons gainfully occupied. It will be noticed that the percentage of the total employed which was employed in industry showed a steady upward trend to 1930, but that from that year to 1935 the proportion employed in industry showed a considerable falling off in proportion to the total employed. The figures for 1935 are estimated by using the index numbers first set out in this discussion. The falling off in industrial employment disclosed by the figures for 1935 is believed to be due to the proportionate unemployment in industry, which is shown throughout this discussion, and that a material proportion of such falling off represents persons who have drifted back from urban employment to the rural homes from whence they came. This belief is confirmed by the fact that the United States Census of Agriculture for 1935 shows a considerable increase in the number of persons engaged in agriculture but without specific wages therefor.

[fol. 216] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF J. L. KAUFMAN—FOR DEFENDANTS—Filed November 18, 1936

STATE OF ALABAMA,
Montgomery County:

Before me the undersigned Notary Public and for said county and state personally appeared J. L. Kaufman, who

is known to me and who being by me first duly sworn, deposes and says:

(1) I was duly appointed, qualified and am acting as Chairman of the Alabama Unemployment Compensation Commission, hereinafter called the Commission, created under the provisions of the Alabama Unemployment Compensation Act (General Acts of Alabama, 1935, page — et seq. as amended); hereinafter referred to as the Act, that under my general supervision and control as Chairman, to the extent provided in said act, the Commission has administered, and is now administering, the provisions of such act in the manner required by the act and by section 10 thereof,

(2) The Commission has not engaged the services of any person or employee other than those authorized by the act and section 10 (d) thereof nor has the Commission engaged in any publication or propagandizing activities other than those authorized by the act and section 10 (c) thereof and reasonably necessary to the carrying out of such provisions; nor has the Commission expended any funds for any publication purpose other than for those prescribed by section 10 (c).

(3) The Commission has adopted rules and regulations requiring employers subject to the act to file with it such [fol. 217] reports as are reasonably necessary to the efficient enforcement of the provisions of the act, and to keep such reasonable records with reference to the number and status of their employees as will enable the Commission correctly to determine the amounts of wages paid to their employees who are subject to the act and the proper amount of contributions due from such employees and the employer under the act. The general rules and regulations so adopted are not discriminatory or oppressive as to any employer, but are of a general nature applicable alike to all employers subject to the act and are reasonably necessary to the efficient and effective administration of the act.

(4) The act makes no provision for the imposition by the Commission of any summary or administrative penalty, and such penalties as are provided by the act, that is to say, interest at the rate of 1% per month on delinquent payments due as provided by section 14, and the criminal penalties for intentional violations or fraud provided by section 15 of the act, can only be enforced or imposed by an orderly

proceeding in a Court of law. I am informed and believe, and upon such information and belief state, that in any such action at law to enforce the payment of contributions due, with interest, or to impose the criminal penalties provided, any person could, and would have the opportunity to, assert every claim, right or immunity which he might have or claim under the Constitutions and laws of the United States and of the State of Alabama.

(5) The Commission has not threatened any person or employer subject to the terms of the act that in the absence of compliance with the act and payment of the contributions demanded, that it will not issue certificates with respect to credits under Title IX of the Federal Social Security Act. The Commission has made no such threats to the Southern Coal and Coke Company or the Gulf States Paper Company. The Commission has properly demanded [fols. 218-219] of the Southern Coal and Coke Company and the Gulf States Paper Company, as well as all other employees subject to the act, that they pay the proper amounts of contribution due from them under the terms of the act. The Commission has no power to compel the grant or denial of any credit or off-set against the tax levied under the terms of Title IX of the Federal Social Security Act, and unless the contributions required to be paid under the Alabama Act are in fact paid by the person claiming the right to such off-set or credit, the Commission is without authority to issue, and cannot issue, to any such person a receipt or certificate such as might entitle such person to any credit under Title IX of the Federal Social Security Act.

(6) That hereto attached as Exhibit "A", is a true and correct copy of the "Employers Contribution Report Covering Employer and Employee Contributions", which is the general form required by the Commission, filed with the Commission by the Southern Coal and Coke Company, showing the number of its employees and the hours worked, by the week, for the period from May 1, 1936 to August 31, 1936, with dates inclusive.

(7) It appears from this report that for the two-week period ending May 15, 1936 the Southern Coal and Coke Company employed 324 persons, subject to the Act, for a total of 22,917 hours; that for the two-week period ending

July 15, 1936 the number of employees declined to 306, but that the total hours of work declined to 15,924, showing an apparent total unemployment, during the latter period, of 18 employees, and partial unemployment of the remaining 306 of approximately fifty per cent or approximately thirty-three and one-third per cent according as the percentage is calculated upon the minimum (for the two-week period ending July 15) or maximum (for the two-week period ending May 15) number of hours worked.

• • • • • • •

[fol. 220] (11) Except as restrained therefrom by the Courts the Commission will continue to administer the Alabama Unemployment Compensation Act in accordance with its provisions.

J. L. Kaufman.

Sworn to and subscribed before me this the 17th day of November 1936.

Florence Ferrell, Notary Public, Montgomery County, Alabama. (Seal.)

(Here follow two photos, side folios 221 and 221½)

EXHIBIT - "A" - Kauffman 12-00039

SOUTHERN COAL & COKE CO
BOOTHTON ALA

Form C.R. No. 2
Alabama U.C.C.

EMPLOYER'S CONTRIBUTION REPORT COVERING EMPLOYER AND EMPLOYEE CONTRIBUTIONS

For the Period ~~January 1~~ May 1, through ~~April 30~~ August 31, 1936, Due not later than ~~September 28~~ October 5, 1936.

Location of establishment covered by this report BOOTHTON, ALABAMA
(if address is different from that shown above in right hand corner.)

(1) Duration of pay period		(2) Date of end of period	(3) Number of covered employees	(4) Total hours worked by covered employees	(5) Money wages	(6) Money value of Other remuneration	(7) Total earnings Cols. 5 and 6
Week	1						
	2						
	3						
	4						
	5						
	6						
	7						
	8						
	9						
	10						
	11						
	12						
	13						
	14						
	15						
	16						
	17						
	18						
			Total				
Half Month	1	May 15	324	22,917	$14,590.67		$14,590.67
	2	May 31	317	22,194	14,374.61		14,374.61
	3	June 15	318	20,264	13,141.81		13,141.81
	4	June 30	312	19,831	12,910.96		12,910.96
	5	July 15	308	15,924	11,136.15		11,136.15
	6	July 31	313	20,189	13,561.99		13,561.99
	7	August 15	313	18,276	11,998.71		11,998.71
	8	August 31	317	20,739	13,310.21		13,310.21
			Total		$105,025.11		$105,025.11
Month	1						
	2						
	3						
	4						
			Total				
Deferred payments if any							
			Grand Total				$105,025.11

Employer's Contribution (9/10 of 1 per cent of grand total Column 7)	$ 947.25
Employee's Contribution (total of employees' contributions, each employee's contribution being 1 per cent of his wages)	1,051.23
Total Contributions	$ 1,998.48
1 per cent per month interest if delinquent from due date as set out above	
Corrections (if any) for previous over-payment	
Corrections (if any) for previous under-payment	
Total remittance enclosed	$ 1,998.48

(Make check payable to Alabama Unemployment Compensation Commission and send to 623 Adams Avenue, Montgomery, Ala.)

I certify that the information contained in this report, required in accordance with Section 10 (g) of the Alabama Unemployment Compensation Act, is true and correct in accordance with said Act. No part of the contribution reported as payable on behalf of the employer was deducted or is to be deducted from employees' wages.

Name of Employer SOUTHERN COAL & COKE COMPANY

293

By G. F. Peter

Date signed

Official Title PRESIDENT

On the first line of the signature, show the firm name as given in the address space at the top of the report (unless same has been changed, in which case show new or correct name). If the firm is a corporation, the second line must be signed by a qualified official; or if a partnership, by a partner. If signed by a corporation official, show title.

(See reverse side for Instructions)

FEDERAL COURT
DEPOSITED IN ESCROW

221

280A

Reverse side
Form C.R. No. 2
Alabama U.C.C.

INSTRUCTIONS FOR MAKING CONTRIBUTION REPORT

Pay Roll Period

If you have weekly pay rolls (for all or some of your employees) use lines 1 to 18 for the 18 weeks from May 1 through August 29, 1936. (The week of April 26 to May 2 should be split to begin from May 1. The week of August 30 to September 5 should be included on the September report.) (The weeks need not be split between the months May-June, June-July, and July-August.)

If you have bi-weekly pay rolls, use as many lines as may be needed from 1 to 18, under "Week".

If you have semi-monthly pay rolls (for all or some of your employees) enter the total of each pay roll on Lines 1 to 8 for the 8 half months May through August, under "Half Month".

If you have a monthly pay roll (for some or all of your employees), enter the total for each pay roll for the 4 months, May through August, on the 4 lines under "Month".

Deferred Payments

On this line should be entered all deferred payments—that is, all payments such as annual bonuses for services performed during the months for which this report is being made. After January 1, 1937 a supplementary report must be made for all such deferred payments, indicating the recipients and the period for which each payment is made. In all cases where the accrued value or the amount payable of a deferred payment is known, such amount should be included with money wages and reported for the month in which earned.

Employers having several pay rolls on the same bases within the same period must make separate report of each pay roll within the period on the same basis.

Total all pay rolls opposite "Grand Total".

Date of End of Pay Period

In Column 2 the date desired is the date of the end of the pay period, not the date that wages are paid.

Covered Employees

In Column 3, enter the total number of covered employees on the pay roll for the pay roll period and in employment as defined by Section 2 (g) of the Act. (See also Article V, Rules and Regulations, for excluded employment.)

Hours Worked

In Column 4, enter actual hours worked by all covered employees whose remuneration varies with the number of hours they work; for employees on a fixed stipend, scheduled weekly hours should be substituted.

Employers who have not kept on their pay rolls a record of the hours worked by each employee may omit this column in making their first report. Such information must be supplied for all subsequent months.

Total Earnings

Column 5 must contain the total cash wages paid for each pay roll period.

Column 6 must show the total money value of all remuneration other than cash for each pay roll period (See Article VI, Sections 600-619, Rules and Regulations).

Column 7 must contain the total earnings of all covered employees for each pay roll period and should equal the total of Columns 5 and 6.

GENERAL INSTRUCTIONS

Fill out the report on typewriter or in ink. If you have separate pay rolls for separate establishments, enter the summary for each establishment on a separate sheet and attach to this form. The Commission will furnish extra copies on request.

Do not send cash. Remittance should be in the form of check or money order, payable to Alabama Unemployment Compensation Commission. Cash payments may be made to the Cashier of the Commission at 623 Adams Avenue, Montgomery, Alabama. (See Sections 717-719, Rules and Regulations.)

Additions for previous over-payments and deductions for previous under-payments can be made only upon specific authorization from the Commission and copies of such authorization should be attached to the report on which such corrections are shown. (See Section 716, Rules and Regulations.)

Send the original of the report to Alabama Unemployment Compensation Commission, Montgomery, Alabama, preserving monthly copy to facilitate verification by authorized representatives of the Commission. If one sheet is not sufficient to include all pay rolls of employers during reporting period, additional sheets of this form should be used, numbered 1, 2, 3, etc., in which event the monthly totals should be summarized and inserted only on Grand Total line of the last sheet of the group.

Additional forms may be secured on application to the Commission.

22I½

[fol. 222] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF PEYTON BIBB—Filed November 18, 1936

STATE OF ALABAMA,
Montgomery County:

Publications of the Alabama Mining Institute.

Before me Florence Ferrell, a Notary Public in and for the State of Alabama, Montgomery County, personally appeared Peyton Bibb, who is known to me and who being by me first duly sworn, deposes and says:

I am over the age of twenty-one years and a resident of Birmingham, Alabama.

The Alabama Mining Institute located at Birmingham, Alabama is an association composed of, and financially supported by, coal mining operators of Alabama, for the purpose of fostering and advancing the interests of the coal mining industry in Alabama. Approximately eighty-five percent (85%) of the coal mining operators in Alabama, individual and corporate (and virtually all operators of mines with rail connections) are members of the Alabama Mining Institute, and this group produces approximately ninety-five percent (95%) of the coal mined and distributed in and from the State of Alabama. The offices and Board of Governors of the Alabama Mining Institute are either individual coal operators or executives of coal companies.

[fol. 223] The Southern Coal and Coke Company, located in Shelby County, Alabama, (the plaintiff in case No. 691, before this court) is a member of the Alabama Mining Institute, and Mr. George F. Peter, the President of the Southern Coal and Coke Company, is a member of the Board of Governors of the Alabama Mining Institute. The Alabama Fuel and Iron Company, located in St. Clair County, Alabama, is a member of the Institute.

The members of the Alabama Mining Institute file with it periodically reports of their operations.

During the current year, this Alabama Mining Institute has officially published and circulated generally in Alabama by mail and otherwise, a series of bulletins on the history of coal mining in Alabama. That attached hereto as Exhibit "A" and made a part hereof, is Bulletin Number Eleven, of this series entitled "Coal Mining in Alabama—

Utilization and Distribution of Coal," published and circulated in October, 1936.

That hereto attached as Exhibit "B" and made a part hereof is Bulletin Number Twelve of this series entitled "Coal Mining in Alabama—Coal Mining Employees," published and circulated in October, 1936.

I am informed by the officials of the Alabama Mining [fol. 224] Institute, and believe, and upon such information and belief, state that the facts and statistical data shown in these two Bulletins, except as therein otherwise indicated were correctly assembled and compiled from the reports of its own members and from data furnished it by carriers, coal sales agencies and other persons in Alabama; that the figures therein shown as having been taken from the records of the United States Government and the United States Bureau of Mines were correctly abstracted from such records.

Peyton Bibb.

Sworn to and subscribed before me this 17th day of Nov. 1936.

Florence Ferrell, Notary Public, Montgomery County Alabama. (Seal.)

[File endorsement omitted.]

EXHIBIT - "A" to AFFIDAVIT

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Coal Mining in Alabama

UTILIZATION AND DISTRIBUTION OF COAL

Alabama coal is produced on 31 seams of various grades, each having different characteristics, and adaptable to many uses.[1] It is prepared in various sizes and grades to meet customer requirements, the principal uses being for open grates, stoves, stationery boilers including steamships, railroad locomotives, blacksmithing, all types of heating plants, whether fired by hand, mechanical stokers or pulverizers, also for making gas and coke.[2]

The demand for Alabama coal, which compares favorably in quality with that mined in other competing states, increased steadily up to 1926 when the maximum production of over twenty-one and one-half million tons was reached. Since that time the production has decreased at an alarming rate, being reduced to around nine million tons

(1) Only about 10% of the coal produced in the State is "Lump" or other sizes known as "Domestic" Coal.

(2) The coal produced from most of the seams in this State are not adaptable or susceptible of use in making coke, either under the "High" or "Low" Temperature Carbonization processes; therefore, the product from such seams must be disposed of in its raw state.

during the years 1933, 1934 and 1935, or the lowest since 1900.

The table below shows a comparison of the consumption of Alaban a coal for the years 1926 (peak year) and 1935:

	1926 Tons	1935 Tons	Decrease Tons	Decrease Percent
Used for Domestic Purposes	2,394,791	989,273	1,405,518	58.69
Used for Railroad Fuel	7,467,590	2,926,741	4,540,849	60.80
Used for Steamship Fuel	689,443	230,255	459,188	66.60
Used in Steam Power Plants	4,383,357	1,707,213	2,676,144	61.05
Used in Making Coke	6,573,631	2,846,518	3,727,113	56.70
Total	21,508,812	8,700,000	12,808,812	59.55

During the year 1926 about one-third of the coal produced was shipped outside the State, but in 1935 less than fourteen percent was used outside of Alabama.

CONSUMPTION OF ALABAMA COAL BY STATES

	1926 Tons	1935 Tons	Decrease Tons	Decrease Percent
Alabama	14,410,904	7,508,100	6,902,804	47.90
Georgia	2,344,461	374,100	1,970,361	84.04
Mississippi	2,043,337	295,800	1,747,537	85.52
Louisiana	1,720,705	200,100	1,520,605	88.37
Florida	387,159	182,700	204,459	52.81
Tennessee	322,632	69,600	253,032	78.42
Other States	279,614	69,600	210,014	75.10
Total	21,508,812	8,700,000	12,808,812	59.55

The heavy losses above noted are due mainly to the inroads or displacement of Alabama mined coal in its natural trade territory by laborless fuels and power, viz: natural gas, oil and hydo-electricity, together with coal produced at lower costs in other states.

This decline in consumption was the principal or proximate contributing cause (from 1926 to 1935) of closing

down one hundred and nineteen (119) coal mines (with rail connections) in Alabama and incidentally an enormous loss of capital invested therein; as well as the disemployment of approximately nine thousand mine employes.[3]

It represents an annual loss in cash income to the State of Alabama of over thirty million dollars ($30,000,000.00), of which over twenty-one million dollars ($21,000,000.00), or the equivalent of over five million "man days" work, was lost to coal mine employes. Also many million dollars were lost to those furnishing supplies, including farm products, to the mines and mine employes, to say nothing of the large amount in taxes lost to the State and counties.[4]

In addition to the above the public-carrier railroads serving the coal fields of Alabama have lost nearly ten million dollars ($10,000,000.00)[5] per year in freight revenue of which over four and a quarter million dollars ($4,250,000.00) would have gone to the railroad employes as wages. Needless to say, this also proportionately reduces the the market for the products of Alabama.

Not only the wage earners directly involved but every citizen of the State is consequently affected adversely by this decrease in income and curtailment in purchasing power above mentioned.

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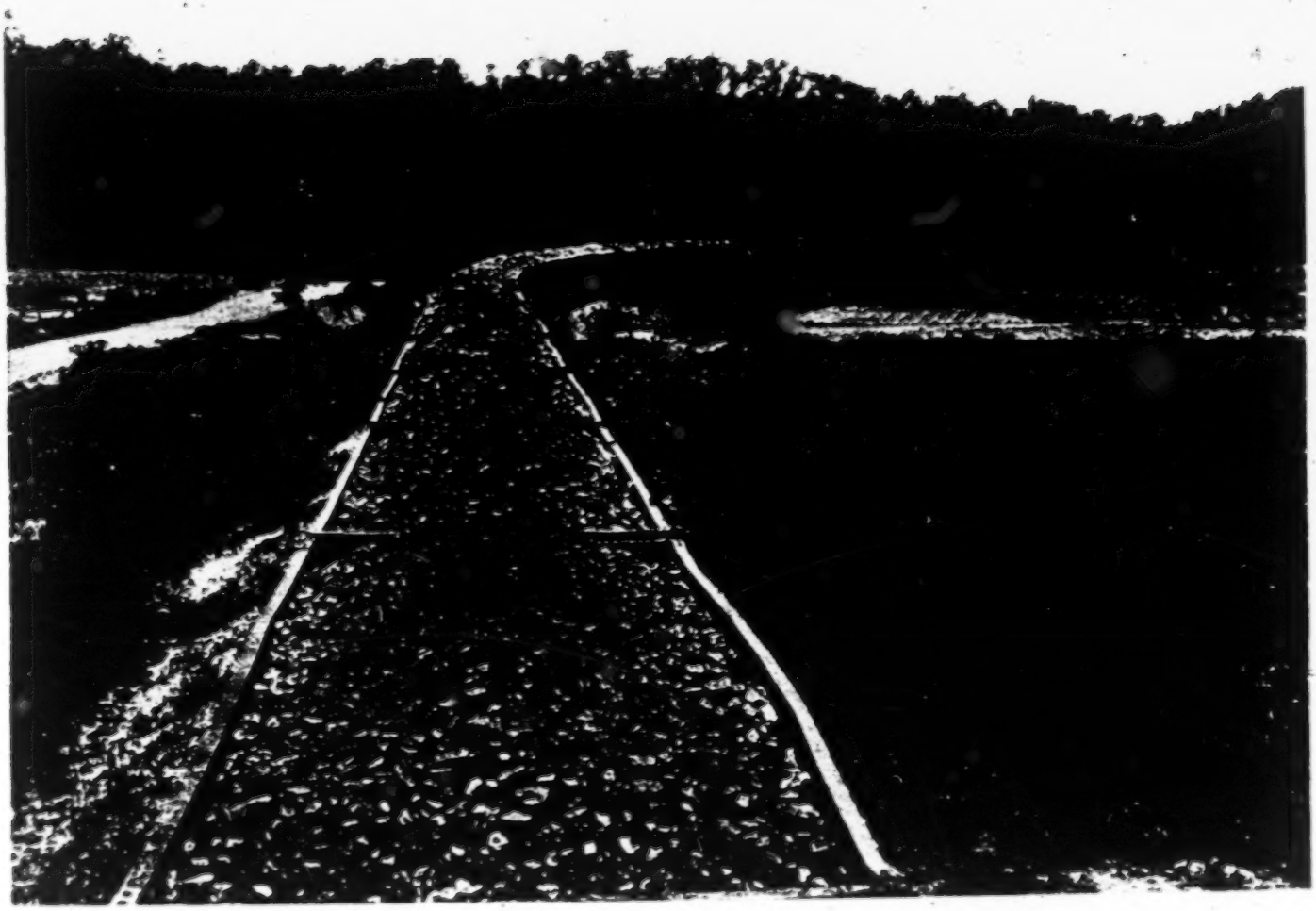
(3) Also, the number of days work available to those now employed has decreased about 30% since 1926.

(4) Approximate loss per year (1926-1935):

Mine labor and salaries	$21,471,412.00
Mine supplies and equipment	7,211,361.00
Insurance premiums, royalties and miscellaneous	1,530,955.00
Taxes	630,193.00
Total	$30,876,921.00

(5) This does not include the revenue lost to privately owned railroads in the Birmingham district which handle a large tonnage of coal and coke and whose revenue and employment have also been materially reduced.



A Trainload of Alabama Coal En Route to Market

EXHIBIT - "B" to AFFIDAVIT

ALABAMA MINING INSTITUTE

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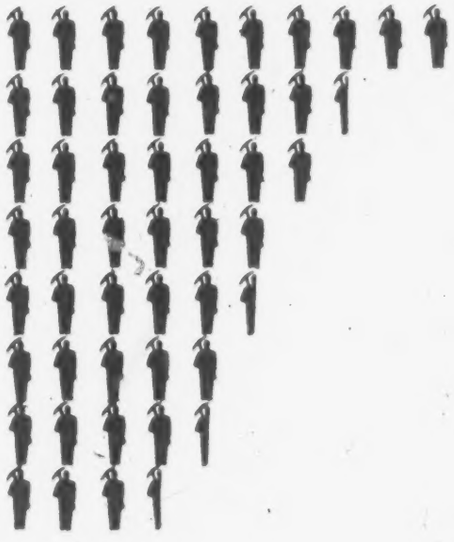
Coal Mining in Alabama

COAL MINE EMPLOYES

Due to the adverse geological conditions in the coal fields of Alabama, referred to in our previous issues, the production of coal per man is considerably less than elsewhere as shown by comparison below and table on page 3.

NUMBER OF MEN REQUIRED TO PRODUCE 26 TONS OF COAL PER DAY



ALABAMA
SOUTHERN APPALACHIAN
VIRGINIA
HARLAN (KY)
WEST VIRGINIA
WEST KENTUCKY
ILLINOIS
INDIANA

Number Twelve

In addition to the "miners", who break down and load the coal, a large number of "day men"[1] (non-producers) are required to operate and maintain the mine (including the tipple, preparation plant, etc., outside.)

The "day men" include many classes of skilled or semi-skilled labor, such as, engineers, motormen, electricians, bonders, wiremen, trackmen, rockmen, fanmen, weighmen, gas men, carpenters, machinists, blacksmiths, inspectors, supervisors, and others too numerous to mention.[2]

Furthermore, as most of the mines in Alabama are "slope" mines or "shaft" mines without natural drainage, they must be dewatered or freed of the accumulation of water which comes from underground springs and streams. Also, large quantities of surface water seep into the mines through crevices in the broken geological strata or cracks caused by subsidence of the overburden of the worked-out area and extending from the roof of the mine upward to the surface. This requires the purchase, installation and maintenance of large pumps and miles of pipe, at great expense, which are serviced by engineers, electricians, pipemen, pumpers, and their assistants, as well as heavy expense for power to pump millions of gallons of water daily upgrade several hundred feet.[3]

These various classes of labor are required in every coal mine, wherever located; however, a greater proportion of "day men" are needed in Alabama mines than in the mines of other states. This is due to the necessity of removing large quantities of rock (called "dead work") above or below the thin coal seams,[4] to provide sufficient head room for the mine workers and permit passage of mules, electric locomotive and mine cars. Also, the steep and variable grades

---

(1) The "Day men" do all the work inside and outside the mine not performed by the "Miner." It requires about one "Day man" for each "Miner."

(2) Also many thousands of dollars must be spent for labor (as well as supplies) in opening and developing the mine before any coal is available for market.

(3) In some mines as much as 20 tons of water must be pumped out of the mine for each ton of coal produced.

(4) Some seams now being worked in Alabama are only 20 inches thick.

underground caused by the necessity of following the pitching seams, which are broken up by faults, calls for more haulage men and timber men than are required in mines with thick, flat seams. Likewise, because of the much greater percentage of coal washed in Alabama. the number of men required to hand-pick the coal and operate the coal washing plants is far in excess of the number required in other states where only a very small proportion of the coal requires washing (over 73% of all Alabama coal is washed).

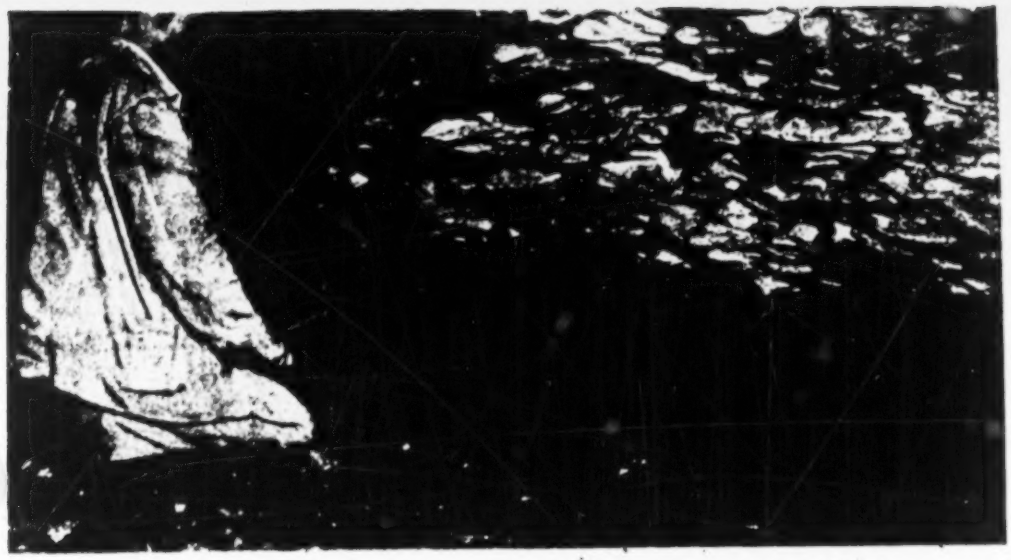
Because of these conditions and the relatively small amount of coal that can be broken down and loaded by the miner in Alabama, the production per man per day is much lower than it is in other coal fields. The table below is from the records of the United States Bureau of Mines for 1935.

	Average Tons Per Man Per Day[5]
Alabama	2.62
Southern Appalachian (part Tenn. and Ky.)	3.38
Virginia	3.84
Harlan Field (Ky.)	4.34
West Virginia	4.73
West Kentucky	5.11
Illinois	5.62
Indiana	7.75

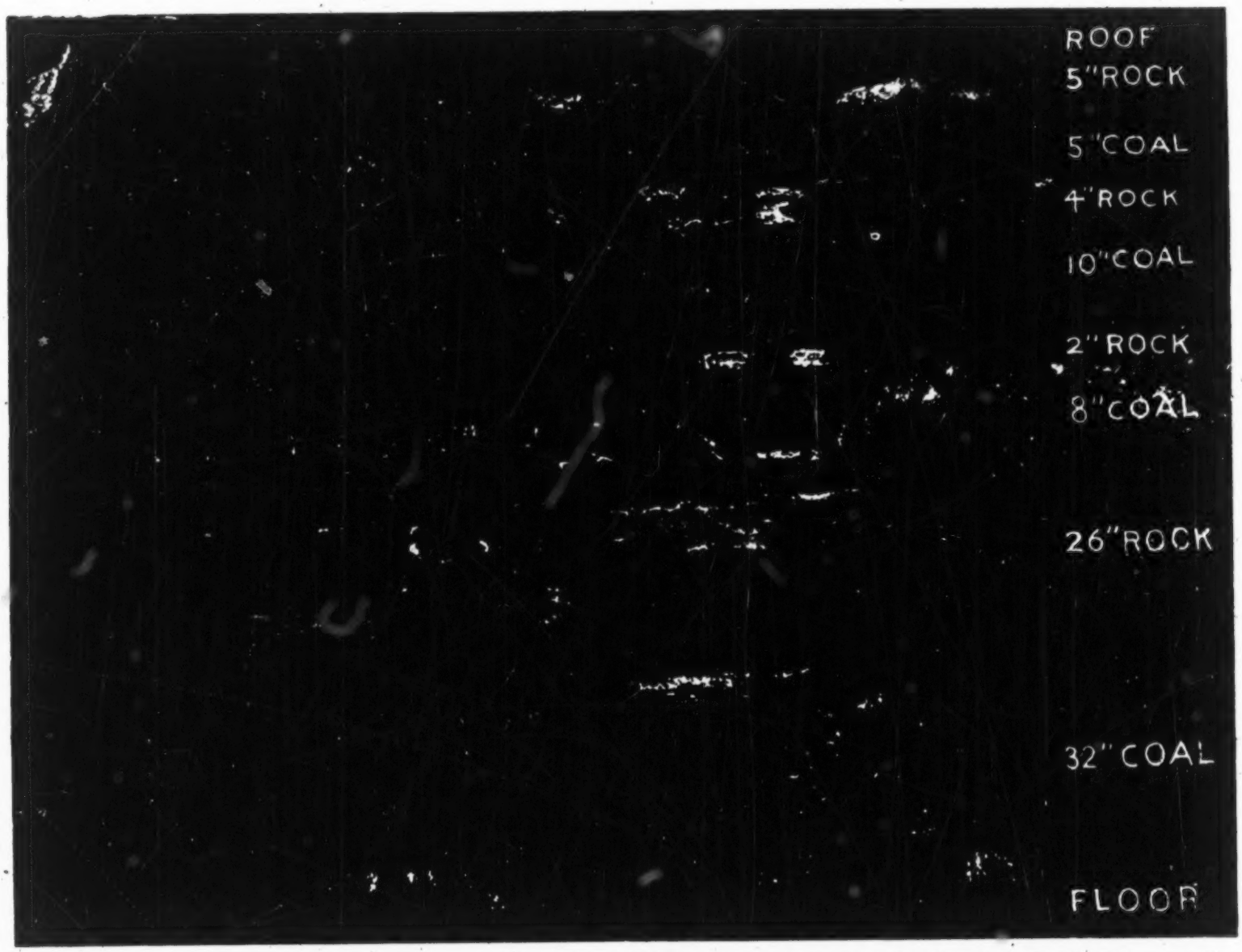
In other words, it requires 10 men to produce 26 tons of coal per day (7 hours) in Alabama, whereas, less than 3½ men can produce that quantity in the same time in Indiana. (See illustration on front page.)

These conditions naturally increase the cost of production and reports of the Federal Government for 1934 show Alabama coal costs 13.34% more to produce than coal mined in the Southern Appalachian District—18.16% more than in Virginia—18.68% more than the Harlan Field (Ky.)—36.72% more than West Virginia—49.39% more than Illinois—and 52.61% more than Indiana. (West Kentucky figures are not available.)

(5) "Tons per man per day" represents the total coal tonnage (per day) divided by the total number of mine employes.



Mining on 20-inch Clean Seam in Alabama, Two Miles Underground



Working Face in Room of an Alabama Mine (on "Big Seam") Showing Partings of Rock Between the Layers of Coal. There Are Also Numerous Thin Partings of Rock Not Visable or Indicated in the Picture. These Impurities Must be Removed by Hand-picking and Mechanical Washing Before the Coal is Shipped to Market.

228½

[fol. 229] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA

[Title omitted]

Findings of Fact and Conclusions of Law—Filed December 15, 1936

STATEMENT

The Federal Social Security Act was approved August 14, 1935. The Alabama Unemployment Compensation Law was approved September 14, 1935, and amended by three Acts approved April 21, 1936. The Alabama Act follows the suggestions or requirements of the Social Security Act and has been approved by the Federal Social Security Board. The Alabama Act creates the Alabama Unemployment Compensation Commission to administer it, and its enforcement in court is required of the Attorney General of Alabama. Under the Alabama Act reports by employers have been required and payments, being payroll percentages in part deducted from employees' pay and in part paid by the employers, are already due and demanded. Failures to comply are punishable by cumulative penalties and by criminal prosecutions, all requiring court action. Two bills have been filed in this court seeking preliminary and permanent injunctions and other relief, against the members of the Alabama Unemployment Compensation Commission and the Attorney General of Alabama, one by the Southern Coal & Coke Company and one by the Gulf States Paper Company, and have been heard together by a court of three judges on the same evidence, and on their [fol. 230] respective pleadings. The Alabama Act is assailed as unconstitutional both under the equal protection and due process clauses of the Fourteenth Amendment, and under the Alabama Constitution, and the Social Security Act which is contended to be necessarily involved in the Alabama Act is assailed as being not within the powers of Congress and in violation of the due process clause of the Fifth Amendment. Other constitutional difficulties are alleged. Both preliminary and permanent injunctions are now for decision.

Findings of Fact

1. There is in each case diversity of citizenship and more than three thousand dollars involved exclusive of interest and costs.

2. If payment be made of the sums demanded their recovery, if the Act be unconstitutional, would be uncertain and difficult, no clear and adequate remedy at law being apparent, and there would arise a multiplicity of suits with employees whose pay was withheld. If payment be refused so as to test the validity of the Act by a forced collection, penalties and criminal liabilities would be incurred if the Act be valid, both numerous and serious, so that the remedy by resistance at law is not safe and adequate. The remedy here sought in equity is more certain and effectual.

3. The Act seeks to alleviate the public evils and private hardships of unemployment. The evidence aided by common knowledge shows that Alabama was originally and still is predominantly an agricultural State, and that in agriculture unemployment is not an acute problem. The land may always be tilled and will yield a living though business conditions be adverse, and even the old and the ill are generally worth their keep on a farm. The development of capitalistic industry has created a great class who work for others and have no capital but only their capacity to work. [fol. 231] On the average they have nothing and make no adequate provision for illness, old age or unemployment. Illness and old age though fairly certain to come are spread out in time and space. Unemployment becomes acute and cumulative in periods of business depression, the unemployed especially in industrial communities are unable to help each other, or to help themselves, and suffer great distress, even starvation. Sickness is apt to occur, criminality is encouraged, and riot and revolution risked. The whole public is vitally interested in ameliorating the distress of such unemployment.

4. In the past no special legislative remedy for unemployment has been attempted. Poverty, however caused or by whomever suffered, has had the traditional relief in Alabama by poor laws, through the counties and their general taxation. This relief is limited and proved wholly inadequate during the great depression of the past few years.

5. The remedy proposed in the Act of Sept. 14, 1935, is, as interpreted in behalf of the State of Alabama in the answers, not a relief for indigence, but a scheme for compulsory insurance against unemployment, in which the beneficiary draws his benefits not because he is poor but because he has paid for them. The relief is not complete, for there is a waiting period during which nothing can be drawn, and the relief when it begins continues in general for only sixteen weeks, and covers but half the wage loss in those weeks. But it gives a support for a time within which new employment may be found or the old resumed, and keeps some money in circulation to uphold general business, relieving the cumulative collapse that so often attends either local or general business depressions. The means adopted by the Legislature is appropriate to the end in view.

6. At the passage of the Act there were no accurate and full data available on which actuarial estimates could be made of the fund and the contributions necessary to sustain [fol. 232] the proposed benefits. Unemployment, as it depends on business cycles, would seem hardly predictable. But the Legislature had the federal census of 1930, the investigations and tabulations of the Federal Bureau of Labor Statistics, and the data and suggestions assembled in connection with the Federal Social Security Act, besides the fund of general knowledge and the judgment which all Legislatures are supposed to possess. There were no special hearings touching the proposed law, but it had the usual constitutional delays in its passage. It was reconsidered for amendment in April, 1936. The Act is on its face somewhat tentative, in that the right to amend and repeal is expressly reserved, a delay of two years provided before benefits can be paid, and the Commission established is to get information and acquire experience which is to be made the basis of classification and adjustment of rates after 1940.

7. The exceptions from the Act have discernible reasons which prevent them from being arbitrary. The peculiar status of agriculture and its slight need for the remedy have been above alluded to. Domestic service in homes is similar, such servants seldom being discharged in great numbers at once or left to suffer. The same is true of the employers of the near relatives mentioned in the Act. Service on ships in navigable waters, service on interstate rail-

way carriers, and for the United States and its instrumentalities are peculiarly subject to federal law, and impositions on employer and employee would run into peculiar difficulties. So also impositions on charitable institutions and their employees would burden the charities which are semi-public at best. The State and its instrumentalities are excluded for like reasons. Why solicitors and agents of insurance companies are omitted is not apparent.

[fol. 233] 8. The main classification is between employers of eight persons or more and those of less than eight. Some employers and employees are now by litigations opposing the law on the ground that it is arbitrary to include in the burdens and benefits of the law employers and their employees where there are eight employed and to exclude where there are only seven or six. No reason for the difference this made appears. It is suggested that very small payrolls would not yield much contribution nor pay to bother with. But from the employee standpoint the need of protection is not less because he works with fewer employees, and from the public standpoint the unemployment of a number of persons carries the same menace whether they formerly worked for large or small concerns. It is evident that six or seven high salaried employees would cause a much greater payroll than a dozen or fifty day-laborers. No reason is found for the inclusion alone of employers of eight or more persons; nor why less than all should be included. If a store having seven employees is competing with one having eight, it is manifest that the former can undersell the latter, and the latter must discharge one employee, or go broke and discharge all eight, equalizing wage reductions being forbidden.

9. The evidence shows that petitioners here, and many other employers of hundreds of workers each, have a record of few or no discharges except for cause for a number of years past even during the recent depression, and have no prospect of unemployment in the future; so that if the Act had been in force in the past they would have paid in many thousands of dollars each year, but their employees would have gotten almost nothing, and that the same thing will likely be true in the future. On the other hand many employments are habitually seasonal and fluctuating, unemployment being large and regularly recurrent, so that bene-

fits in excess of contributions will be drawn and at the expense of employers and employees of the more stable em- [fol. 234] ployments. The pooling of funds for all employments under the Act will thus result almost certainly in making certain classes of business carry the burden of benefits to other classes. The general and indirect benefit to all business resulting from the disbursement of the benefits is not a practical off-set to this inequality. It is however also true that in a period of years every employer may meet disaster and have to curtail or cease operations, so that there is always the possibility of his employees drawing benefits above those indicated by his previous record.

10. Contributions required of employees are but premiums for an insurance protection. Contributions required of employers can hardly be called such. Employers have no direct benefit from the insurance fund. Such contentment as it may give employees, or such general improvement to business as its disbursement may cause are too indirect and vague to be measured. The direct effect of the law is to require the employer to pay about two-thirds of the premium necessary to protect the employee. It is equal to a compulsory increase by that much of the wages paid to be devoted to insurance for the employee's benefit. In the long run it might be absorbed in a general reduction of wages by force of business competition, next adverted to.

11. The business of both petitioners is interstate and in competition with others. In the coal mining business of one petitioner there is a great labor handicap in that because of geological conditions in Alabama a miner there cannot produce as much coal as in a mine say in Indiana. The burden of the Act might force the employer to reduce labor costs or go out of business. Nearly all business in the United States proceeds in competition with business in other States. Any special or other legislation burdensome [fol. 235] to business which may be adopted in one State will put the business of that State at a disadvantage in the competition. The State cannot protect itself by a tariff or otherwise curb the competitors in the other States by reason of the federal Constitution. Hence the necessity of coordination through the federal government, sought to be had in this instance by the Social Security Act.

12. The provisions of the Social Security Act did not intimidate the members of the Alabama Legislature into passing the Alabama Act, but did induce its passage by making it appear more advantageous to the State than not to pass it. The Legislature provided that if the federal Act should be held unconstitutional by the Supreme Court of the United States the Alabama Act shall become inoperative. The State of Alabama does not here complain that her freedom of legislation has been interfered with.

Conclusion of Law

1. The Court has jurisdiction, both federal and equitable.

2. The evils of unemployment are such as to be taken cognizance of under the police powers of the States and to authorize a remedy which is not forbidden by the Constitutions.

3. Compulsory insurance against unemployment though a new remedy in the United States of America is a possible one. Recognizing the troubles that have come from allowing the capitalist to hire the worker, it could be considered as a regulation, operating in future, conditioning the right to engage in such hiring. But the right to work for a wage, or to hire another, is among the fundamental liberties of the country and they cannot be arbitrarily narrowed or taken away. See Adkins vs. Children's Hospital, 261 U. S. 525. Whether the requirement of this insurance and the payments to support it be arbitrary or not depends on the state of society at the time and the urgency of the need for the regulation. Of such things the legislature is the primary judge. Several businesses, such as motorcarriage, [fol. 236] have been required to carry insurance. Marriage in Alabama could formerly be contracted only on giving a bond. We are not required in this case to give an opinion on this broad question of police power, because this legislation must fall on a narrower point.

4. If an insurance Act like this could stand up which either covered all employments (not excepted for valid reasons), or which classified employments so closely as to escape arbitrary imposition of burdens (see Mountain Timber Co. vs. Washington, 243 U. S. 219), the present Act denies due process in that the classification of employers

having eight or more employees is entirely arbitrary. Whether viewed from the standpoint of employers or employees there is no reason for the distinction made, and equal protection of the law is not afforded either to employers or employees. Colgate vs. Harvey, 296 U. S. 404, 423, 425.

5. The requirement that employers pay about two-thirds of the contribution to the general fund for the direct benefit of the unemployed with no direct benefit to themselves violates the provisions of Art. I, Sec. 23, of the Alabama Constitution. Robertson vs. Collins, 218 Ala. 54.

6. The Social Security Act, supposing it to be valid, did not operate either to coerce or bribe the Alabama Legislature so as to impair the validity of their legislative action. The motives of legislators cannot at the instance of private litigants be inquired into by courts. Fletcher vs. Pock, 6 Cranch, 87, 130; 131; United States vs. Des Moines R. R. Co., 142 U. S. 545; Anglo vs. Chicago R. R. Co. 151 U. S. 17, Cooley Const. Lims. (8 Ed.), p. 379, 380.

7. The Alabama Act being disposed of because the Court finds it to be violative of the Constitution of the United States and that of Alabama, it is unnecessary for this Court to pass on the constitutionality of the Federal Act. (Tennessee Publishing Company, Petitioner, vs. American National Bank, decided by the Supreme Court of the United States, November 9th, 1936.) We make no decision and ex-
[fol. 237] press no opinion as to the constitutionality of the Federal Act.

Chamberlin, Inc., vs. Andrews, 271 N. Y. 1, affirmed by an equal division of the Supreme Court of the United States, is of no authority on the federal questions involved. Hertz vs. Woodmen, 218 U. S. 205.

Sam'l H. Sibley, Circuit Judge; Robert T. Ervin, U. S. District Judge; Charles B. Kennamer, U. S. District Judge.

[fol. 238] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF ALABAMA

No. 692. In Equity

GULF STATES PAPER CORPORATION, a Corporation, Plaintiff,

vs.

ALBERT A. CARMICHAEL, Individually and as Attorney General of the State of Alabama, et al., Defendants

No 691. In Equity

SOUTHERN COAL & COKE COMPANY, a Corporation, Plaintiff,

vs.

ALBERT A. CARMICHAEL, as Attorney General, et al., Defendants

DECREE—Filed December 15, 1936

This cause came on to be heard upon a motion for an interlocutory injunction and for a final decree before a Court composed of Honorable Samuel H. Sibley, Circuit Judge, Honorable C. B. Kennamer, District Judge, and Honorable Robert T. Ervin, District Judge, and was submitted upon the pleadings and upon the evidence introduced, and the argument of counsel for the parties. The Court having taken time to consider, and being now fully advised, it is considered and adjudged that the defendants and each of them in their individual and official capacities, be enjoined pending the final determination of this cause from enforcing against complainant the Act described in the petition and passed by the Legislature of the State of Alabama, approved September 14, 1936, as amended, and known as the Alabama Unemployment Compensation Law, by requiring contributions or reports thereunder or by exacting penalties, fines, taxes or imprisonment because thereof, and from doing any act by themselves or their agents or representatives in the enforcement of said Act. This injunction is to be effective upon the complainant filing

a bond in the sum of Ten Thousand ($10,000) Dollars, conditioned as by the statute in this regard required.

And upon further consideration, and by way of final decree, in pursuance of the Findings of Fact and the Conclusions of Law filed herewith, it is considered and adjudged that the defendants and each of them in their individual [fol. 239] and official capacities, their agents and representatives, are perpetually enjoined from enforcing said Act against complainant in any way by requiring contributions, reports or otherwise, or by exacting fines, penalties or other punishments because of a failure to comply with said Act, the said Act being held and declared to be unconstitutional and void because in conflict with the Fourteenth Amendment of the Constitution of the United States and of Article 1, Section 23, of the Constitution of Alabama.

This decree signed this December 15, 1936.

Sam'l H. Sibley, United States Circuit Judge; Robert T. Ervin, United States District Judge; Charles B. Kennamer, United States District Judge.

[fols. 240-241] Bond on injunction for $10,000.00, approved and filed Dec. 28, 1936, omitted in printing.

[fol. 242] In United States District Court

[Title omitted]

Stipulation as to Writ of Injunction—Filed January 20, 1937

It is hereby stipulated by and between counsel for Plaintiff and the Defendants in the above styled cause that the Defendants and each of them, by and through their counsel of record, accept service of the writ of injunction as ordered and decreed in the final decree in said cause of date December 15, 1936, and agree in all respects to be bound thereby until the further orders of the Court, and it is agreed that

the issuance and service of any other writ or notice is hereby waived.

Albert A. Carmichael, Attorney General, State of Alabama; Chas. L. Rowe, Assistant Attorney General, State of Alabama; Peyton D. Bibb, Special Assistant of the Attorney General, State of Alabama; Nicholas E. Stallworth, First National Bank Building, Mobile, Alabama, Attorneys for Appellants. Borden Burr (Birmingham, Ala-
[fol. 243] bama); Neil P. Sterne (Anniston, Alabama); Marion Rushton (Montgomery, Alabama); Attorneys for Plaintiff. Benners, Burr, McKamy, & Forman, Birmingham, Alabama; Knox, Acker, Sterne & Liles, Anniston, Alabama; Rushton, Crenshaw & Rushton, Montgomery, Alabama, of Counsel for Plaintiff.

[File endorsement omitted.]

[fol. 244] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed January 20, 1937

Now come the defendants, Albert A. Carmichael, individually and as Attorney General of the State of Alabama, and J. L. Kaufman, individually and as Chairman and a member of the Unemployment Compensation Commission of the State of Alabama, and Lucien C. Brown and James A. Lipscomb, each individually, and as members of said Unemployment Compensation Commission, and Bibb Graves, individually and as Governor of the State of Alabama, and feeling themselves aggrieved by the final decree of the Court entered herein, the 15th day of December, 1936, pray an appeal therefrom to the Supreme Court of the United States. The particulars wherein they consider the final decree erroneous are set forth in their assignment of errors on file and to which reference is made.

Wherefore, the premises considered, your petitioners pray that an appeal in their behalf to the Supreme Court of the United States for the correction of the errors complained of and herewith duly assigned, be allowed and

granted; and that an order be had fixing the amount of bond and security to be given by these defendants as Appellants and conditioned as the law directs, and they pray [fol. 245] a reversal of said decree.

Albert A. Carmichael, Attorney General, State of Alabama; Chas. L. Rowe, Assistant Attorney General, State of Alabama; Peyton D. Bibb, Special Assistant of the Attorney General, State of Alabama; Nicholas E. Stallworth, First National Bank Building, Mobile, Alabama, Attorneys for Defendants.

[fol. 246] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENTS OF ERROR—Filed January 20, 1937

Now come the defendants, Albert A. Carmichael, individually and as Attorney General of the State of Alabama, and J. L. Kaufman, individually and as Chairman and a member of the Unemployment Compensation Commission of the State of Alabama, and Lucien C. Brown and James A. Lipscomb, each individually, and as members of said Unemployment Compensation Commission, and Bibb Graves, individually and as Governor of the State of Alabama, and in connection with their petition for appeal file the following assignments of error on which they will rely on their appeal to the Supreme Court of the United States from the final decision of the Three-Judge District Court entered the 15th day of December, 1936.

The Three-Judge District Court erred:

1. In not granting the defendants' motion to dismiss the bill of complaint.

2. In not dismissing the bill of complaint as prayed in defendants' motion.

3. In not acting upon the defendants' motion to dismiss [fol. 247] the bill of complaint.

4. In perpetually enjoining the defendants from enforceing the Alabama Unemployment Compensation Act against the plaintiff in any way by requiring contributions, reports

or otherwise or by exacting fines, penalties or other punishments of the plaintiff because of its failure to comply with such Act.

5. In enjoining the defendants from requiring of the plaintiff the payment of the contributions and the filing of the reports required of it by the Alabama Unemployment Compensation Act.

6. In enjoining the defendants from exacting of the plaintiff the fines, penalties or other punishments provided for upon its failure to comply with the Alabama Unemployment Compensation Act.

7. In enjoining the defendants from enforcing the terms and provisions of the Alabama Unemployment Compensation Act against the plaintiff.

8. In granting an interlocutory injunction enjoining the defendants, pending the final determination of the suit, from enforcing against the plaintiff the terms, provisions and requirements of the Alabama Unemployment Compensation Act by requiring of the plaintiff the contributions or reports thereunder or by exacting penalties, fines, taxes or imprisonment and from doing any act by themselves or their agents or representatives in the enforcement of said Act.

9. In holding the Alabama Unemployment Compensation Act to be unconstitutional and void because in conflict with the Fourteenth Amendment of the Constitution of the United States.

10. In holding the Alabama Unemployment Compensation Act to be unconstitutional and void because in conflict with Article 1, Section 23 of the Constitution of Alabama.

11. In holding the Alabama Unemployment Compensation Act to be unconstitutional and void as denying to the plaintiff the equal protection of the law.

12. In holding that the Alabama Unemployment Compensation Act is a denial to the plaintiff of the due process of law in that the classification of employers having eight or more employees is entirely arbitrary.

[fols. 248-263] 13. In holding that the classifications of employers contained in the Alabama Unemployment Com-

pensation Act are so arbitrary as to render the Act unconstitutional and void as a denial of due process of law to the plaintiff.

14. In holding that the plaintiff has no adequate remedy at law in the premises.

15. In not dismissing the plaintiff's bill of complaint.

16. In the rendition of the final decree in this cause filed and entered December 15, 1936.

Albert A. Carmichael, Attorney General of the State of Alabama; Chas L. Rowe, Assistant Attorney General of the State of Alabama; Peyton D. Bibb, Special Assistant of the Attorney General of the State of Alabama; Nicholas E. Stallworth, First National Bank Building, Mobile, Alabama, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 264] In United States District Court for the Middle District of Alabama

No. 691. In Equity

Southern Coal & Coke Company, a Corporation, Plaintiff-Appellee,

vs.

Albert A. Carmichael, Individually and as Attorney General of the State of Alabama, and J. L. Kaufman, Individually and as Chairman and a Member of the Unemployment Compensation Commission of the State of Alabama, and Lucien C. Brown and James A. Lipscomb, Each Individually, and as Members of Said Unemployment Compensation Commission, and Bibb Graves, Individually and as Governor of the State of Alabama, Defendants-Appellants

Before the Honorables Samuel H. Sibley, Circuit Judge, and Robert T. Ervin and Chas. B. Kennamer, District Judges, Composing the Court Consisting of Three Judges under Section 380 of Title 28 of the United States Code Annotated (Judicial Code Section 266, as Amended)

ORDER ALLOWING APPEAL—Filed January 20, 1937

It appearing to the Court in the cause stated that the Defendants, Albert A. Carmichael, individually and as Attorney General of the State of Alabama, and J. L. Kaufman, individually and as Chairman and a member of the Unemployment Compensation Commission of the State of Alabama, and Lucien C. Brown and James A. Lipscomb, each individually, and as members of said Unemployment Compensation Commission, and Bibb Graves, individually and as Governor of the State of Alabama, have filed their petition for appeal to the Supreme Court of the United States, and have filed therewith their assignment of errors, and also their statement as to the jurisdiction of the Supreme Court of the United States as required by Rule 12 of the Supreme Court Rules, duly disclosing that the Supreme Court of the United States has jurisdiction upon appeal to review the decree in question,

It is hereby Ordered by the Court that the appeal prayed for be and the same is hereby allowed and granted to the Supreme Court of the United States from the decree rendered in said cause on the 15th day of December, 1936, and that said Defendants give a bond with good and sufficient [fols. 265-267] security in the sum of $1,000.00 Dollars ($1,000.00) that they as Appellants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good.

Dated this 20th day of January, 1937.

Samuel H. Sibley, Circuit Judge; Robert T. Ervin, District Judge; Charles B. Kennamer, District Judge.

[File endorsement omitted.]

[fols. 268-270] Bond on appeal for $1,000.00, approved and filed Jan. 21, 1937, omitted in printing.

[fols. 271-272] Citation in usual form, showing service on Borden Burr et al., filed Jan. 20, 1937, omitted in printing.

[fol. 273] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL—Filed January 20, 1937

The plaintiff in the above entitled case is hereby notified that the defendants appealed from the decree of the Court as rendered on the 15th day of December 1936, and that said appeal will be to the Supreme Court of the United States in accordance with the citation as issued in this case.

Albert A. Carmichael, Attorney General, State of Alabama; Chas. L. Rowe, Assistant Attorney General, State of Alabama; Peyton D. Bibb, Special Assistant of the Attorney General, of the State of Alabama; Nicholas E. Stallworth, First National Bank Building, Mobile, Alabama, Attorneys for Defendants.

[fol. 274] Service of the above notice of appeal accepted, this the 12th day of January, 1937.

Borden Burr, Birmingham, Alabama; Neil P. Sterne, Anniston, Alabama; Marion Rushton, Montgomery, Alabama, Attorneys for Plaintiff. Benners, Burr, McKamy & Forman, Birmingham, Alabama; Knox, Acker, Sterne & Liles, Anniston, Alabama; Rushton, Crenshaw & Rushton, Montgomery, Alabama, of Counsel for Plaintiff.

[File endorsement omitted.]

[fol. 274-a] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed January 20, 1937

It is hereby stipulated and agreed by and between the parties hereto that for the purposes of the appeal which has been allowed herein to the Supreme Court of the United States, the clerk is requested to prepare and forward to the clerk of the Supreme Court of the United States a transcript of the record on appeal which shall include only the following portions of the record:

1. The last amended bill of complaint (the original bill of complaint being omitted) and application for interlocutory and final injunction filed herein on the 27th day of October, 1936.

2. The order granting a restraining order and setting the application for an interlocutory injunction down for hearing before the Hon. Samuel H. Sibley, Circuit Judge, the Honorable Robert T. Ervin, District Judge, and the Honorable Charles B. Kennamer, District Judge, filed herein October 9, 1936.

3. Order setting the hearing of plaintiffs' application for an interlocutory injunction down for hearing on November 18, 1936, before the Hon. Samuel H. Sibley, Circuit Judge, the Honorable R. T. Ervin, District Judge, and the Honorable Charles B. Kennamer, District Judge, continuing the temporary restraining order until that date and ordering service of notice that and prior orders upon the Honorable Bibb Graves, Governor of Alabama, together with return [fol. 274-b] of service thereof on the Honorable Bibb Graves, Governor of Alabama, endorsed thereon as filed herein on the 29th day of October, 1936.

4. The defendant's motion to dismiss the plaintiff's bill of complaint as amended, filed herein on the 7th day of November, 1936.

5. The answer of the defendants filed herein on the 10th day of November, 1936, and affidavit verifying it filed November 18, 1936.

6. The stipulation and agreement between the plaintiff and the defendants that without waiving the plaintiff's insistence on its application for the interlocutory injunction, this cause might also be submitted for final decree on the same pleadings and proof, the same being filed herein on the 18th day of November, 1936.

7. The order of the Court entered the 18th day of November, 1936, granting the plaintiff a temporary injunction upon the same terms and conditions as imposed by the temporary restraining order theretofore entered by the Honorable C. B. Kennamer, District Judge, on the 9th day of October, 1936, except as therein modified, to be effective until the date of the final decree herein.

8. The statement of the evidence and the evidence therein referred to under Equity Rule 75 stipulated and agreed to between the plaintiff and defendants and the order approving the same, the same being filed herein on the 20th day of January, 1937.

9. The findings of fact and conclusions of law filed by the court herein on the 15th day of December, 1936.

10. The decree filed by the court herein on the 15th day of December, 1936.

10½. Plaintiff's bond filed December 28, 1936.

11. Stipulation waiving issue, service and return of service of the writ of injunction to the defendants filed herein on the 20th day of January, 1937.

12. The petition for appeal filed herein on the 20th day of January, 1937.

13. The assignment of errors accompanying the petition for appeal filed herein on the 20th day of January, 1937.

14. The statement as to the jurisdiction of the Supreme Court of the United States.

15. The order allowing the appeal and fixing the bond [fol. 275] filed herein on the 20th day of January, 1937.

16. Service of appeal papers and acceptance of service thereof.

17. The appeal bond and the approval of the same filed herein on the 21st day of January, 1937.

18. The citation on appeal and acceptance of service of same filed herein on the 20th day of January, 1937.

18½. Notice of appeal and acceptance filed 1/20/37.

19. This Præcipe and the order approving the same filed herein on the 20th day of January, 1937.

This the 21st day of January, 1937.

Albert A. Carmichael, Attorney General of the State of Alabama; Chas. L. Rowe, Assistant Attorney General of the State of Alabama; Peyton Bibb, Special Assistant of the Attorney General of the

State of Alabama; Nicholas E. Stallworth, First National Bank Building, Mobile, Alabama, Attorneys for Defendants. Inge & Stallworth, Mobile, Alabama, of Counsel for Appellants. Borden Burr (Birmingham, Alabama), Neil P. Sterne (Anniston, Alabama), Marion Rushton (Montgomery, Alabama), Attorneys for Plaintiff. Benners, Burr, McKamy & Forman, Birmingham, Alabama; Knox, Acker, Sterne & Liles, Anniston, Alabama; Rushton, Crenshaw & Rushton, Montgomery, Alabama, of Counsel for Plaintiff.

[fol. 276] Counsel for appellants, defendants, having submitted the foregoing Præcipe, and the same having been approved and stipulated by counsel for appellee, plaintiff, the said Præcipe is hereby approved and it is ordered that the clerk transmit the original narrative of proceedings herein specified to the clerk of the Supreme Court of the United States for the purposes of the appeal in the said cause.

Ordered, this the 20th day of January, 1937.

Samuel H. Sibley, United States Circuit Judge; Robert T. Ervin, United States District Judge; Charles B. Kennamer, United States District Judge.

[File endorsement omitted.]

[fol. 277] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 278] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF THE POINTS ON WHICH APPELLANTS INTEND TO RELY AND OF THE PARTS OF THE RECORD WHICH APPELLANTS THINK NECESSARY FOR THE CONSIDERATION THEREOF—Filed February 8, 1937

The appellants intend to rely upon the contentions that the specially constituted District Court erred:

1. In not granting the defendants' motion to dismiss the bill of complaint.

2. In not dismissing the bill of complaint as prayed in defendants' motion.

3. In not acting upon the defendants' motion to dismiss the bill of complaint.

4. In perpetually enjoining the defendants from enforcing the Alabama Unemployment Compensation Act against the plaintiff in any way by requiring contributions reports or otherwise or by exacting fines, penalties or other punishments of the plaintiff because of its failure to comply with such Act.

5. In enjoining the defendants from requiring of the plaintiff the payment of the contributions and the filing of the reports required of it by the Alabama Unemployment Compensation Law.

[fol. 279] 6. In enjoining the defendants from exacting of the plaintiff the fines, penalties or other punishments provided for upon its failure to comply with the Alabama Unemployment Compensation Law.

7. In enjoining the defendants from enforcing the terms and provisions of the Alabama Unemployment Compensation Law against the plaintiff.

8. In granting an interlocutory injunction enjoining the defendants, pending the final determination of the suit, from enforcing against the plaintiff the terms, provisions and requirements of the Alabama Unemployment Compensation Law by requiring of the plaintiff the contributions or reports thereunder or by exacting penalties, fines, taxes or imprisonment and from doing any act by themselves or their agents or representatives in the enforcement of said Law.

9. In holding the Alabama Unemployment Compensation Law to be unconstitutional and void because in conflict with the Fourteenth Amendment of the Constitution of the United States.

10. In holding the Alabama Unemployment Compensation Law to be unconstitutional and void because in conflict with Article 1, Section 23, of the Constitution of Alabama.

11. In holding the Alabama Unemployment Compensation Law to be unconstitutional and void as denying to the plaintiff the equal protection of the law.

12. In holding that the Alabama Unemployment Compensation Law is a denial to the plaintiff of the due process of law in that the classification of employers having eight or more employees is entirely arbitrary.

13. In holding that the classifications of employers contained in the Alabama Unemployment Compensation Law are so arbitrary as to render the Act unconstitutional and void as a denial of due process of law to the plaintiff.

14. In holding that the plaintiff has no adequate remedy at law in the premises.

[fol. 280] 15. In not dismissing the plaintiff's bill of complaint.

16. In the rendition of the final decree in this cause filed and entered December 15, 1936.

The appellants deem the entire record as filed to be necessary for the consideration of the contentions above enumerated.

Albert A. Carmichael, Attorney General of the State of Alabama; Chas. L. Rowe, Assistant Attorney General of the State of Alabama; Peyton D. Bibb, Special Assistant of the Attorney General of the State of Alabama; Nicholas E. Stallworth, First National Bank Building Mobile, Alabama, Attorneys for (Defendants) Appellants. Inge & Stallworth, Mobile, Alabama, of Counsel.

Service of a copy of the foregoing statement of points is hereby acknowledged on behalf of the appellee this 12th day of January, 1937.

Borden Burr, Birmingham Alabama; Neil P. Sterne, Anniston, Alabama; Marion Rushton, Montgomery, Alabama, Attorneys for (Plaintiff) Appellee. Benners, Burr, McKamy & Forman, Birmingham, Alabama; Knox, Acker, Sterne & Liles, Anniston, Alabama; Rushton, Crenshaw & Rushton, Montgomery, Alabama.

[fol. 281] Service of a copy of the foregoing statement of points is hereby acknowledged on behalf of the appellee, this 12th day of January, 1937.

Borden Burr (Birmingham, Alabama); Neil P. Sterne (Anniston, Alabama); Marion Rushton (Montgomery, Alabama). Benners, Burr, McKamy & Forman, Birmingham, Alabama; Knox, Acker, Sterne & Liles, Anniston, Alabama; Rushton, Crenshaw & Rushton, Montgomery, Alabama, of Counsel for plaintiff.

[fol. 282] [File endorsement omitted.]

Endorsed on cover: File No. 41,264. M. Alabama, D. C. U. S. Term No. 724. Albert A. Carmichael, Individually and as Attorney General of the State of Alabama, et al., Appellants, vs. Southern Coal & Coke Company. Filed February 8, 1937. Term No. 724, O. T., 1936.

FILE COPY

FILED
FEB 8 1937
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 724

ALBERT A. CARMICHAEL, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE STATE OF ALABAMA, ET AL.,
Appellants,

vs.

SOUTHERN COAL & COKE COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA.

STATEMENT AS TO JURISDICTION.

ALBERT A. CARMICHAEL,
Attorney General of Alabama;
CHAS. L. ROWE,
Assistant Attorney General;
PEYTON D. BIBB,
Special Assistant of the Attorney General;
NICHOLAS E. STALLWORTH,
Counsel for Appellants.

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IN THE

DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA

IN EQUITY.

No. 691

SOUTHERN COAL & COKE COMPANY, A CORPORATION,
Plaintiff, Appellee,

vs.

ALBERT A. CARMICHAEL, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE STATE OF ALABAMA, AND J. L. KAUFMAN, INDIVIDUALLY AND AS CHAIRMAN AND A MEMBER OF THE UNEMPLOYMENT COMPENSATION COMMISSION OF THE STATE OF ALABAMA, AND LUCIEN C. BROWN AND JAMES A. LIPSCOMB, EACH INDIVIDUALLY, AND AS MEMBERS OF SAID UNEMPLOYMENT COMPENSATION COMMISSION, AND BIBB GRAVES, INDIVIDUALLY AND AS GOVERNOR OF THE STATE OF ALABAMA,

Defendants, Appellants.

BEFORE THE HONORABLES SAMUEL H. SIBLEY, CIRCUIT JUDGE, AND ROBERT T. ERVIN AND CHAS. B. KENNAMER, DISTRICT JUDGES, COMPOSING THE COURT CONSISTING OF THREE JUDGES UNDER SECTION 380 OF TITLE 28 OF THE UNITED STATES CODE ANNOTATED. (JUDICIAL CODE SECTION 266 AS AMENDED.)

STATEMENT AS TO JURISDICTION.

The jurisdiction of the Supreme Court of the United States upon appeal is invoked under Sections 238 and 266 of the Judicial Code as amended by the Act of February

13, 1925, c. 229, Section 1 (43 Stat. 938) (United States Code Ann., Title 28, Sections 345 and 380). The final decree of the Three-Judge District Court was entered December 15, 1936. Application for appeal is herewith presented on the 20th day of January, 1937.

The statute of the State of Alabama, the validity of which is involved, is the Alabama Unemployment Compensation Law: General Acts of Alabama of 1935, page 950, as amended by Act No. 156, approved April 21, 1936, General Acts of Alabama, Special Session 1936, page 175; by Act No. 194, approved April 21, 1936, General Acts of Alabama, Special Session 1936, page 225, and by Act No. 195, approved April 21, 1936, General Acts of Alabama, Special Session 1936, page 228. As so amended the Alabama Unemployment Compensation Law reads, in pertinent parts, as follows:

"SECTION 1. *Short Title.*—This Act shall be known and may be cited as the 'Unemployment Compensation Law'.

"SECTION 2. *Definitions.*—The following words and phrases, as used in this Act, shall have the following meanings unless the context clearly requires otherwise:

"(a) 'Benefits' means the money payable to an employee as compensation for his wage losses due to unemployment as provided in this Act.

"(b) 'Commission' means the Unemployment Compensation Commission established by this Act, or its authorized representative.

"(c) 'Contributions' means the money payments to the State Unemployment Compensation Fund required by this Act.

"(d) Eligibility. An employee shall be deemed 'eligible' for benefits for any given week of his partial or total unemployment (occurring subsequent to any required waiting period) only when he is not disqualified

by any provision of this Act from receiving benefits for such week of unemployment.

"(e) 'Employee' means any person employed by an employer subject to this Act and in employment subject to this act.

"(f) 'Employer' means any person, partnership, association, corporation, whether domestic or foreign, or the legal representative, trustee in bankruptcy, receiver, or trustee thereof, or the legal representative of a deceased person, who or whose agent or predecessor in interest has employed at least eight persons in employment subject to this Act within each of twenty or more calendar weeks in the year 1935 or any subsequent calendar year; provided that such employment in 1935 shall make an employer subject on January 1, 1936, and such employment in any subsequent calendar year shall make a newly subject employer subject for all purposes as of January first of the calendar year in which such employment occurs. In determining whether an employer (of any person in the state) employs enough persons to be an 'employer' subject hereto, and in determining for what contributions he is liable hereunder, he shall whenever he contracts with any contractor or subcontractor for any work which is part of his usual trade, occupation, profession, or business, be deemed to employ all persons employed by such contractor or subcontractor on such work, and he alone shall be liable for the contributions measured by wages paid to such persons for such work; except as any such contractor or subcontractor, who would in absence of the foregoing provisions be liable to pay said contributions, accepts exclusive liability for said contributions, under an agreement with such employer made pursuant to general commission rules. All persons thus employed by an employer (or any person) within the state, in all of his several places of employment maintained within the state, shall be treated as employed by a single 'employer' for the purposes of this Act; provided, moreover, that where any person, partnership, association, corporation, whether domestic or foreign, or the legal

representative, trustee in bankruptcy, receiver, or trustee thereof or the legal representative of a deceased person either directly or through a holding company or otherwise, has a majority control or ownership of otherwise separate business enterprises employing persons in the state, all such enterprises shall be treated as a single 'employer' for the purposes of this Act. Any employer subject to this Act shall cease to be subject hereto only upon a written application by him after a finding by the commission that he has not within any calendar week within the last completed calendar year employed eight or more persons in employment subject hereto. Any employer (of any person within the state) not otherwise subject to this Act shall become fully subject hereto upon filing by such employer with the commission of his election to become fully subject hereto for not less than two calendar years, subject to written approval of such election by the commission.

"(g) 'Employment' means any employment in which all or the greater part of the person's work (within the continental United States) is or was customarily performed within this State, under any contract of hire, oral or written, express or implied, whether such person was hired and paid directly by the employer or through any other person employed by the employer, provided the employer had actual or constructive knowledge of such contract. Such employment shall include the person's entire employment (in all states, including the District of Columbia). In the case of all other persons employed partly in this state and partly in other states, the commission is authorized, with the approval of the Governor, to enter into reciprocal arrangements with other states as to the extent the employment of such persons shall be included under this definition. The term 'employment' shall not apply to:

"(1) Agricultural labor;

"(2) Domestic service in a private home;

"(3) Service performed as an officer, bar pilot, or member of the crew of a vessel on the navigable waters of the United States;

"(4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

"(5) Service performed in the employ of the United States Government or of an instrumentality of the United States;

"(6) Service performed in the employ of a carrier engaged in interstate commerce and subject to the Act of Congress known as The Railway Labor Act; as amended or as hereafter amended. Service performed by those engaged as solicitors or agents for Insurance Companies;

"(7) Service performed in the employ of a state, or political subdivision thereof, or an instrumentality of one or more states or political subdivisions;

"(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

"(h) 'Employment Office' means that free public employment office (operated by the state) or branch thereof nearest to the employee's place of residence or employment, unless otherwise prescribed by the commission.

"(i) An employee's 'full-time weekly wage' means the weekly earnings such employee would average from his employment if employed at the 'hourly rate of earnings' and for the 'full-time weekly hours' applicable to such employee.

"(1) The applicable 'hourly rate of earnings' shall be determined by averaging the employee's actual earnings for at least three hundred hours of employment by his most recent employers.

"(2) An employee's 'full-time weekly hours' shall mean the standard maximum weekly hours which can lawfully be worked by the employee (in the employment in question) under any code of fair competition or under any applicable state law specifying lower maximum weekly hours or agreement. Where there is no code, law or agreement applicable, the commission shall determine the employee's full-time weekly hours by averaging his weekly hours for all calendar weeks (in at least the past three months) in which he worked thirty hours or more, or by such equitable method as the commission may by general rule prescribe for determining a full-time standard of not less than thirty weekly hours for benefit purposes. In the case of an employee who is found by the commission, at the time he becomes eligible for benefits, to be unable by reason of physical disability or by reason of continuing personal obligations (other than employment) to work half the full-time weekly hours which prevail in such establishment for full-time employees, the commission shall determine his full time weekly hours for benefit purposes by averaging his weekly hours for all weeks (in at least the past three months) in which he worked.

"(j) 'Fund' means the Unemployment Compensation Fund established by this Act, to which all contributions and from which all benefits required under this Act shall be paid.

"(k) 'Partial Unemployment'.—An employee shall be deemed 'partially unemployed' in any calendar week of partial work if he fails to earn in wages (and/or any other pay for personal services, including net earnings from self-employment) for such week at least one dollar more than the amount of weekly benefits for total unemployment he might receive if totally unemployed and eligible.

"(l) 'Payroll' means the total amount of all wages payable by the employer to his employees, commencing with wages payable for employment occurring after the employer becomes a newly subject to this Act.

"(m) 'Total Unemployment'.—An employee shall be deemed 'totally unemployed' in any calendar week in which he performs no wage-earning services whatsoever, and for which he earns no wages (and no other pay for personal services, including net earnings from self-employment), and in which he cannot reasonably return to any self-employment in which he has customarily been engaged.

"(n) 'Unemployment Administration Fund' means the Unemployment Compensation Administration Fund established by this Act.

"(o) 'Wages' means every form of remuneration for employment received by a person from his employer, whether paid directly or indirectly by the employer, including salaries, commissions, bonuses, and the reasonable money value of board, rent, housing, lodging, payments in kind, and similar advantages.

"(p) 'Waiting-period-unit' means a period (for which no benefits are payable but during which the employee is in all other respects eligible) consisting of either one week of total unemployment or two weeks of partial unemployment, required as a condition precedent to the receipt of benefits for subsequent unemployment, as prescribed in this Act.

"(q) 'Weeks' means calendar week ending at midnight Saturday, or any equivalent period approved by the Commission.

"SECTION 2(r). 'Week of employment' means each calendar week occurring at least one year after contributions first became generally due under this Act from employers then subject hereto, within which the person in question performed any employment subject to this Act for any employer or employers subject to

this Act and was not partially unemployed as defined in Section (2k).

'SECTION 3. *Unemployment Compensation Fund.*—(a) Fund. There is hereby created the Unemployment Compensation Fund, to be administered by the commission without liability on the part of the state beyond the amounts paid into and earned by the fund. This fund shall consist of all contributions and money paid into and received by the fund as provided by this Act, of property and securities acquired by and through the use of moneys belonging to the fund, and of interest earned upon the moneys belonging to the fund.

"(b) Withdrawals.—The fund shall be administered in trust and used solely to pay benefits, upon vouchers drawn on the fund by the commission pursuant to general commission rules and no other disbursement shall be made therefrom. Such rule shall be governed by and consistent with any applicable constitutional requirements, but the procedure prescribed by such rules shall be deemed to satisfy (and shall be in lieu of) any and all statutory requirements (for specific appropriation or other formal release by state officers of state moneys prior to their expenditure) which might otherwise be applicable to withdrawals from the fund.

"(c) Treasurer.—The commission shall designate a treasurer of the fund, who shall pay all vouchers duly drawn upon the fund, in such manner as the commission may prescribe. He shall have custody of all moneys belonging to the fund and not otherwise held or deposited or invested pursuant to this act. The treasurer shall give bond conditioned on the faithful performance of his duties as treasurer of the fund, in a form prescribed by statute or approved by the attorney general, and in an amount specified by the commission and approved by the governor. All premiums upon bonds required pursuant to this section when furnished by an authorized surety company or by a duly consfituted governmental bonding fund shall be paid from the unemployment administration fund. The

treasurer shall deposit and/or invest the fund under the supervision and control of the commission, subject to the provisions of this Act.

"(d) Deposit.—All contributions paid under this Act shall upon collection be deposited in or invested in the obligations of the 'Unemployment Trust Fund' of the United States Government or its authorized agent, so long as said trust fund exists, notwithstanding any other statutory provision to the contrary. The commission shall requisition from the Unemployment Trust Fund necessary amounts from time to time.

"SECTION 4. *Contributions.*—(a) Payment. On and after the first day of January, 1936, contributions shall accrue and become payable by each employer then subject to this act. Thereafter contributions shall accrue and become payable by any new employer on and after the date on which he becomes newly subject to this act. The contributions required hereunder shall be paid by each employer in such manner and at such times as the commission may prescribe.

"(b) Rates of Contributions. Every employer shall pay contributions equal to the following percentages of the total wages payable (regardless of the time of payment) with respect to employment by him during such month:

"(1) With respect to employment during the calendar year 1936 the rate shall be ninety-one-hundredths (.90) of one per centum;

"(2) With respect to employment during the calendar year 1937 the rate shall be one and eighty one-hundredths (1.80) of per centum;

"(3) With respect to employment during the calendar year 1938 and thereafter the rate shall be two and seventy one-hundredths (2.70) of per centum.

"(c) Future Rates, Based on Benefit Experience. Based on the actual contribution and benefit experience of employers under this act, the commission shall (in

the year 1941 and in each calendar year thereafter) classify employers in accordance with said experience; and shall determine for each employer the rate of contribution which shall apply to him throughout the calendar year, pursuant to said experience and classification. The minimum contributions thus payable to the fund shall in no case amount to less than one and one-half (1½%) per centum or more than four (4%) per centum on the employer's payroll, and the average contribution rate of all employers shall be approximately three (3%) per centum (on payroll) for any calendar year. An employer's contribution rate shall in no case be reduced until there has been at least three calendar years throughout which his employees received or could have received benefits when and if unemployed and eligible. The commission shall investigate and classify industries, employers, and/or occupations with respect to the degree of unemployment hazard in each, taking due account of any relevant and measurable factors, and shall have power to apply any form of classification or rating system which in its judgment is best calculated to rate individually the unemployment risk most equitably for each employer or group of employers and to encourage the stabilization of employment. The general basis of classification proposed to be used for any calendar year shall be subject to discussion, adoption and publication in the manner prescribed in this act for all general commission rules.

"(d) 'Contributions by Employees'.—Each employee shall contribute to the fund one per centum of his wages earned after May 1st, 1936 and after the date as of which the conditions determining whether or not his employer is or will be subject to the Act have been fulfilled. Each employer shall be responsible for withholding such contributions from the wages of his employees, shall show such deduction on his payroll and records, and shall transmit all such contributions to the fund pursuant to general Commission rules.

"SECTION 5. *Benefits*—(a) Payment of Benefits. After contributions have been due under this act for two years, benefits shall become payable from the fund to any employee who thereafter is or becomes unemployed and eligible for benefits, based on his weeks of employment as defined in this act, and shall be paid through the employment offices at such times and in such manner as the commission may prescribe.

"(b) Weekly Benefits for Total Unemployment.—An employee totally unemployed and eligible in any week shall be paid benefits (computed to the nearest half-dollar) at the rate of fifty per centum of his full-time weekly wage with maximum benefits of $15.00 per week.

"(c) Weekly Benefits for Partial Unemployment.—An employee partially unemployed and eligible in any week shall be paid sufficient benefits so that his week's wages, (and/or any other pay for personal services, including net-earnings from self-employment and his benefits combined will be two dollars more than the weekly benefit to which he would be entitled if totally unemployed in that week.)

"(d) One-to-Four Ratio of Benefits to Employment.—The aggregate amount of benefits an employee may at any time receive shall be limited by the number of his past weeks of employment against which benefits have not yet been charged hereunder. Each employee's benefits shall be thus charged against his most recent weeks of employment available for this purpose. Each employee shall receive benefits in the ratio of one-quarter week of total unemployment benefits (or an equivalent amount, as determined by general commission rules, of benefits for partial unemployment or for partial and total unemployment combined) to each week of employment of such employee occurring within the 104 weeks preceding the close of the employee's most recent week of employment.

"(e) Maximum Weeks of Benefit in Any Year.—Benefits shall be paid each employee for the weeks dur-

ing which he is totally or partially unemployed and eligible for benefits, based on his past weeks of employment; but not more than sixteen (16) weeks of total unemployment benefits (or an equivalent total amount, as determined by commission rules, of benefits for partial unemployment or for partial and total unemployment combined) shall be paid any employee for his weeks of unemployment occurring within any fifty-two (52) consecutive weeks.

"(f) Additional Benefits (One-to-Twenty Ratio).—An eligible employee who has received the maximum benefits permitted under subsection (e) shall receive additional benefits in the ratio of one week of total unemployment benefit (or its equivalent) to each unit of twenty aggregate weeks of employment occurring within the 260 weeks preceding the close of the employee's most recent week of employment, and against which benefits have not already been charged under this act. Such additional benefits shall be charged against the employee's earliest weeks of employment available for this purpose.

"SECTION 6. *Benefits Eligibility Conditions.*—(a) Employment Requirement. An employee shall be deemed eligible for benefits for any given week of his unemployment only if he has either

(1) Accumulated 40 weeks of employment subject hereto within the 104 weeks immediately preceding the date of his application for benefits, or

(2) Accumulated 26 weeks of employment subject hereto within the 52 weeks immediately preceding the date of his application for benefits.

(b) Availability and Registration for Work. An employee shall not be eligible for benefits in any week of his partial or total unemployment unless in such week he is physically able to work and available for work, whenever duly called for work through the employment office. To prove such availability for work, every employee partially or totally unemployed shall register

for work and shall file claim for benefits at the employment office, within such time limits and with such frequency and in such manner (in person or in writing) as the commission may by general rule prescribe. No employee shall be eligible for benefits for any week in which he fails without good cause to comply with such registration and filing requirements. A copy of the commission's rules covering such requirements shall be furnished by it to each employer who shall inform his employees of the terms thereof when they become unemployed.

"(c) Waiting Period. Benefits shall be payable to an employee only for his weeks of unemployment occurring subsequent to a 'waiting period', whose duration shall in each case be determined as follows: An aggregate of three (3) waiting-period-units shall be required of the employee within the fifty-two (52) weeks preceding the start of any given week of unemployment. There shall not be counted toward an employee's required waiting period or periods any week of total or partial unemployment in which he is ineligible for benefits under subsection (b), (d), (e), (f), (g) of this section.

"(d) During Trade Disputes.—An employee shall not be eligible for benefits for any week in which his total or partial unemployment is directly due to a labor dispute still in active progress in the establishment in which he is or was last employed.

"(e) Voluntary Leaving.—An employee who has left his employment voluntarily without good cause connected with such employment shall be ineligible for benefits for the week in which such leaving occurred and for the three next following weeks.

"(f) Discharge for Misconduct.—An employee who has been discharged for proved misconduct connected with his employment shall thereby become ineligible for benefits for the week in which such discharge occurred and for not less than the three nor more than six next following weeks, as determined by the commission in each individual case.

"(g) Refusal of Suitable Employment.—If an otherwise eligible employee fails, without good cause either to apply for suitable employment when notified by the employment office, or to accept suitable employment when offered him, he shall thereby become ineligible for benefits for the week in which such failure occurred and for the three next following weeks. 'Suitable employment' shall mean any employment for which the employee in question is reasonably fitted, which is located within a reasonable distance of his residence or last employment, and which is not detrimental to his health, safety or morals. No employment shall be deemed suitable, and benefits shall not be denied under this act to any otherwise eligible employee for refusing to accept new work, under any of the following conditions:

"(1) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

"(2) if the wages, hours, and other conditions of the work offered are substantially less favorable to the employee than those prevailing for similar work in the locality;

"(3) if acceptance of such employment would either require the employee to join a company union or would interfere with his joining or retaining membership in any bona fide labor organization."

Sections 9 and 10 provided for the creation of the Alabama Unemployment Compensation Commission, which is authorized and directed to administer the Act and to adopt such general rules and regulations as might be necessary to the enforcement of its provisions.

The plaintiff, the Southern Coal & Coke Company, a corporation, engaged in the business of mining and preparing coal for market and employing more than eight persons in the State of Alabama, filed its bill of complaint against the defendants, who are the officials of the State of Alabama charged with the administration and enforcement of the

Alabama Unemployment Compensation Law. The bill prayed, and the plaintiff made application, for an interlocutory injunction suspending and restraining the enforcement, operation or execution of the said Alabama Unemployment Compensation Law by restraining the actions of the defendants and each of them from the enforcement or execution of said Law in so far as said Law imposes upon the plaintiff the obligation of paying the contributions required of it by the terms of the Law, and in so far as the said Law requires the plaintiff to deduct from the wages of its employees and to pay to the Commission the amount of the contributions required by the Law from the plaintiff's employees. The bill further prayed that upon final hearing a permanent injunction of like effect be issued and granted against the defendants.

The application for an interlocutory injunction, as well as the prayer for a permanent injunction, was based upon the alleged unconstitutionality of the said Alabama Unemployment Compensation Law. The plaintiff, by its bill of complaint, contended that the effect of the said Law in requiring contributions to be paid by it and its employees to be used for the purposes set out in the Law, deprived the plaintiff of its property without due process of law, unlawfully interfered with the plaintiff's freedom of contract, and that the provisions of the law were so arbitrary, unreasonable and capricious as to deny to the plaintiff the equal protection of the law, all within the meaning of the Fourteenth Amendment to the Constitution of the United States.

Upon presentation of the bill, the District Judge granted a temporary restraining order which was by appropriate orders maintained in force until the convening of the Three-Judge Court, who continued it in effect until the final decree was rendered.

The facts alleged and admitted of record show that the plaintiff is, and during the whole of 1936 and for years pre-

viously has been, engaged in the mining and preparation of coal for market in the State of Alabama in intrastate commerce, that it employs and has employed more than eight persons therein, and that its business is, to a substantial extent, seasonable in nature.

The defendants by their answer and on the trial insisted that the enactment of the Alabama Unemployment Compensation Law was a proper exercise of the police power of the State of Alabama, that it was neither arbitrary, unreasonable nor capricious, and that it did not deny the plaintiff the equal protection of the laws nor deprive the plaintiff of its property without due process of law nor did it interfere with the plaintiff's right of contract.

There were other collateral issues involved in the suit under the Constitution of the State of Alabama and otherwise not necessary to be stated as a basis for the jurisdiction of the Supreme Court of the United States.

The application for the interlocutory injunction was presented to the Hon. Charles B. Kennamer, Judge of the District Court of the United States for the Middle District of Alabama, who called to his assistance to hear and determine the application of plaintiff for an interlocutory injunction in the premises, two other Judges as required by Section 266 of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, Section 1 (United States Code, Ann., Title 28, Section 380) viz: the Hon. Samuel H. Sibley, Judge of the United States Circuit Court of Appeals for the Fifth Judicial Circuit, and the Hon. Robert T. Ervin, Judge of the District Court of the United States for the Southern District of Alabama.

The cause was submitted on the plaintiff's application for an interlocutory injunction as prayed in its bill of complaint, upon the other pleadings filed in said cause and upon stipulation of counsel and the evidence introduced by each of the parties. Without the plaintiff in any way waiving its in-

sistence on its application for an interlocutory injunction, the cause was at the same time also submitted for final decree upon the same pleadings and upon the same evidence introduced by the parties upon the hearing of plaintiff's application for an interlocutory injunction.

Upon final decree the Three-Judge District Court by unanimous opinion held that the said Alabama Unemployment Compensation Act was unconstitutional and void, and on December 15, 1936, filed in this cause its decree as follows:

> "This cause came on to be heard upon a motion for an interlocutory injunction and for a final decree before a Court composed of Honorable Samuel H. Sibley, Circuit Judge, Honorable C. B. Kennamer, District Judge, and Honorable Robert T. Ervin, District Judge, and was submitted upon the pleadings and upon the evidence introduced, and the argument of counsel for the parties. The Court having taken time to consider, and being now fully advised, it is considered and adjudged that the defendants and each of them, in their individual and official capacities, be enjoined pending the final determination of this cause from enforcing against complainant the Act described in the petition and passed by the Legislature of the State of Alabama, approved September 14, 1935, as amended, and known as the Alabama Unemployment Compensation Law, by requiring contributions or reports thereunder or by exacting penalties, fines, taxes or imprisonment because thereof, and from doing any act by themselves or their agents or representatives in the enforcement of said Act. This injunction is to be effective upon the complainant filing a bond in the sum of Ten Thousand ($10,000) Dollars, conditioned as by the statute in this regard required.
>
> "And upon further consideration, and by way of final decree, in pursuance of the Findings of Fact and the Conclusions of Law filed herewith, it is considered and adjudged that the defendants and each of them in

their individual and official capacities, their agents and representatives, are perpetually enjoined from enforcing said Act against complainant in any way by requiring contributions, reports or otherwise, or by exacting fines, penalties or other punishments because of a failure to comply with said Act, the said Act being held and declared to be unconstitutional and void because in conflict with the Fourteenth Amendment of the Constitution of the United States and of Article 1, Section 23, of the Constitution of Alabama.

"This decree signed this December 15, 1936."

Upon the filing of its final decree the Three-Judge District Court also filed its conclusions of law as follows:

"*Conclusion of Law.*

1. The Court has jurisdiction, both federal and equitable.

2. The evils of unemployment are such as to be taken cognizance of under the police powers of the States and to authorize a remedy which is not forbidden by the Constitutions.

3. Compulsory insurance against unemployment though a new remedy in the United States of America is a possible one. Recognizing the troubles that have come from allowing the capitalist to hire the worker, it could be considered as a regulation, operating in future, conditioning the right to engage in such hiring. But the right to work for a wage, or to hire another, is among the fundamental liberties of the country and they cannot be arbitrarily narrowed or taken away. See Adkins *vs.* Children's Hospital, 261 U. S. 525. Whether the requirement of this insurance and the payments to support it be arbitrary or not depends on the state of society at the time and the urgency of the need for the regulation. Of such things the legislature is the primary judge. Several businesses, such as motor-carriage, have been required to carry insurance. Marriage in Alabama could formerly be contracted only on giving a bond. We are not required in this case to

give an opinion on this broad question of police power, because this legislation must fall on a narrower point.

4. If an insurance Act like this could stand up which either covered all employments (not excepted for valid reasons), or which classified employments so closely as to escape arbitrary imposition of burdens, (see Mountain Timber Co. *vs.* Washington, 243 U. S. 219), the present Act denies due process in that the classification of employers having eight or more employees is entirely arbitrary. Whether viewed from the standpoint of employers or employees there is no reason for the distinction made, and equal protection of the law is not afforded either to employers or employees. Colgate *vs.* Harvey, 296 U. S. 404, 423, 425.

5. The requirement that employers pay about two-thirds of the contribution to the general fund for the direct benefit of the unemployed with no direct benefit to themselves violates the provisions of Art. I, Sec. 23, of the Alabama Constitution. Robertson *vs.* Collins, 218 Ala. 54.

6. The Social Security Act, supposing it to be valid, did not operate either to coerce or bribe the Alabama Legislature so as to impair the validity of their legislative action. The motives of legislators cannot at the instance of private litigants be inquired into by courts. Fletcher *vs.* Peck, 6 Cranch. 87, 130, 131; United States *vs.* Des Moines R. R. Co., 142 U. S. 545; Angle *vs.* Chicago R. R. Co., 151 U. S. 17; Cooley Const. Lims. (8 Ed.), p. 379, 380.

7. The Alabama Act being disposed of because the Court finds it to be violative of the Constitution of the United States and that of Alabama, it is unnecessary for this Court to pass on the constitutionality of the Federal Act. (Tennessee Publishing Company, Petitioner, *vs.* American National Bank, decided by the Supreme Court of the United States, November 9th, 1936.) We make no decision and express no opinion as to the constitutionality of the Federal Act.

Chamberlin, Inc. *vs.* Andrews, 271 N. Y. 1, affirmed

by an equal division of the Supreme Court of the United States, is of no authority on the federal questions involved. Hertz, *vs.* Woodmen, 218 U. S. 205.

SAM'L H. SIBLEY,
Circuit Judge.
ROBERT T. ERVIN,
U. S. District Judge.
CHARLES B. KENNAMER,
U. S. District Judge."

The plaintiff pressed its application for an interlocutory injunction, but as final decree was being entered in the cause, the Court found it unnecessary to grant or act separately on plaintiff's application for an interlocutory injunction, except as appears in the terms of its final decree.

The appeal prayed for is to the Supreme Court of the United States from the final decree granting a permanent injunction, and is provided for by Judicial Code, Section 266, as amended by the Act of February 13, 1925, c. 229, Section 1 (43 Stat. 938, 28 U. S. C. A. Section 380).

Cases pleaded to sustain the jurisdiction of the Supreme Court of the United States are:

T. L. Smith et al. v. *Wilson et al.*, 273 U. S. 388;
Stratton v. *St. Louis S. W. Ry. Co.*, 282 U. S. 10, 31 Sup. Ct. 8, 75 L. Ed. 135;
Brucker v. *Fisher*, 49 F. (2d) 759.

Respectfully submitted,

ALBERT A. CARMICHAEL,
Attorney General, State of Alabama.
CHAS. L. ROWE,
Assistant Attorney General, State of Alabama.

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Supreme Court of the United States

OCTOBER TERM, 1936

NO. 724

ALBERT A. CARMICHAEL, AS ATTORNEY GENERAL FOR THE STATE OF ALABAMA, ET AL., Appellants,

vs.

THE SOUTHERN COAL & COKE COMPANY, Appellee.

No. 797

ALBERT A. CARMICHAEL, AS ATTORNEY GENERAL FOR THE STATE OF ALABAMA, ET AL., Appellants,

vs.

GULF STATES PAPER CORPORATION, Appellee.

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BRIEF AND ARGUMENT FOR APPELLANTS

A. A. CARMICHAEL,
Attorney General of Alabama

NICHOLAS E. STALLWORTH,
JOSEPH P. CHAMBERLAIN,
NOEL T. DOWLING,
Special Assistants to the Attorney General of Alabama.

CHARLES L. ROWE,
PEYTON D. BIBB,
THOMAS S. LAWSON,
Assistant Attorneys General.

ATTORNEYS FOR THE APPELLANTS.

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THOMAS S. LAWSON,
Assistant Attorneys General.

ATTORNEYS FOR THE APPELLANTS.

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Supreme Court of the United States

OCTOBER TERM, 1936

NO. 724

ALBERT A. CARMICHAEL, AS ATTORNEY GENERAL FOR THE STATE OF ALABAMA, ET. AL., Appellants.

vs.

THE SOUTHERN COAL & COKE COMPANY, Appellee

No. 797

ALBERT A. CARMICHAEL, AS ATTORNEY GENERAL FOR THE STATE OF ALABAMA, ET. AL., Appellants.

vs.

GULF STATES PAPER CORPORATION, Appellee.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA

BRIEF AND ARGUMENT FOR APPELLANTS.

JURISDICTION

The same findings of fact and conclusions of law and the decree of the court below were filed December 15, 1936 in both cases. The petitions for appeal were filed and granted on January 20, 1937 and January 30th, 1937, respectively. The jurisdiction of this court is invoked under section 266 of the judicial code as amended (28 U. S. C., §380, 36 Stat. 557, as amended). Paragraph 1 of rule 12 of this court has been complied with and the statements made thereunder, and heretofore filed herein, are referred to for a concise statement of the grounds upon which the jurisdiction of this court is invoked.

STATEMENT OF THE CASES

1. The Decree To Be Reviewed.

These appeals are from the final decree of the Special District Court consisting of three judges, convened as provided by Section 380, Title 28, of the United States Code Annotated (Judicial Code, Section 266). That final decree restrained and enjoined the Defendant officers (Appellants here) (R. 298 in No. 724, R. 184 in No. 797), from taking any steps or instituting any legal proceedings, civil or criminal, to execute or enforce the provisions of the Unemployment Compensation Act of the State of Alabama referred to in the bills of complaint, and which requires the Plaintiffs (the Appellees) as employers of eight or more persons within the State of Alabama, during the year 1936, to pay a tax equal to nine tenths (.9) of one (1) percentum of the total wages payable by them to their employees during the year 1936 in the State of Alabama into a state fund known as the Unemployment Compensation Fund, and also to deduct and withhold from such wages paid by them to their employees in the State of Alabama, after May 1, 1936, the sum of one (1) per centum thereof, being the tax imposed thereby upon Plaintiffs' employees, and to pay such further sum into such Unemployment Compensation Fund.[1]

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[1]The full text of the Alabama Unemployment Compensation Act, General Acts of Alabama, 1935, p. 950, as amended by General Acts of Alabama, special session 1936, pages 176, 225 and 228, and Acts No. ..... and Act No. ..... Extra Session 1936-1937 not yet officially published, is set out in the Appendix, filed herewith, at page 5.

The causes were submitted upon the Plaintiffs' applications for an interlocutory injunction (R. 158 in No. 724, R..... in No. 797) and were heard upon the verified bills of complaint (R. 1 to 27 in No. 724, R. 1 to 27 in No. 797), the motion to dismiss (R. 159 in No. 724, R. 32 to 35 in No. 797), the verified answer of the Defendants (Appellants) (R. 166 to 177 in No. 724, R. 45 in No. 797) and the affidavits introduced in evidence by the parties (R. 182 to 287 in No. 724, R. 69 to 176 in No. 797). By stipulation of counsel (R. 178 in No. 724, R. 65 in No. 797), the causes were also submitted for final decree upon the same pleadings and proof.

2. The Facts.

While the Plaintiff introduced a number of affidavits, in some degree repetitious, the essential facts are not disputed.

In the Southern Coal & Coke Company Case (No. 724) it is admitted that the Appellee (Plaintiff) carries on the business of mining and preparing coal for market in Alabama entirely in intrastate commerce, that it has substantial investments in plants and equipment in Alabama, and that it, and its employees, are in all respects subject to the terms and provisions of the Alabama Unemployment Compensation Act, if it is a valid and constitutional legislative enactment.

It is also admitted that the Appellants (Defendants) are the proper officers of the State of Ala-

bama charged with the enforcement of the Alabama Act, and that they demanded that the Appellee (Plaintiff), prior to the commencement of the suit, remit to them the contributions required from the Appellee and its employees by the terms of the Alabama Act.

It is admitted that the Appellee's operations are essentially seasonal in nature (R. 3, 162, 222). That its practice is to resort to a "spread-of-work" plan during slack seasons, in order to afford the maximum number of its employees minimum employment during times of partial operation. (R. 4, 224).

The Findings of Fact found by the District Court (R. 294 in No. 724) to the extent that it recites: "The evidence shows that petitioners here, and many other employers of hundreds of workers each, have a record of few or no discharges except for cause for a number of years past even during the recent depression, and have no prospect of unemployment in the future;" is clearly an inadvertent error on the part of the District Court as applied to this case, as it is clearly contrary to all averments of fact and evidence introduced as applicable to Appellee's business. It is averred in the complaint (R. 3) and admitted in the answer (R. 162) that plaintiff's business operation was idle 83 work days in 1930, 70 in 1931, 160 in 1932, 90 in 1933, 50 in 1934 and 105 in 1935.

The evidence shows, without conflict, that the coal mining industry in Alabama has been peculiarly affected by the evils of unemployment for the

past ten years. (R. 288 to 290). This evidence, the official publications of the Alabama Mining Institute, shows that during the period from 1926 to 1935 one hundred nineteen substantial coal mines in Alabama with railroad connections ceased operations altogether, resulting in the complete disemployment of approximately 9,000 mine employees, (R. 285). During this decade there has been a net decrease in total number of mine employees from approximately 30,000 to approximately 18,000, or about 40%. (R. 265). The production of coal in Alabama for distribution has declined from 21,500,000 tons in 1926 to 8,700,000 tons in 1935, the average production of coal per man per day in Alabama being 2.62 tons (R. 289). This decrease of 58.69% in coal production in 1935, as compared with 1926, would have resulted in complete disemployment of a far greater number of mine employees had not the coal mining operators generally adopted a spread-of-work system whereby the work available is distributed among a larger number of men than usual, but without increase in the total amount of wages paid. (R. 224). As a result of this and other causes, the total number of days work available to those persons still employed in coal mines in Alabama has decreased about 30% since 1926. (R. 285).

The Plaintiff (Appellee) introduced affidavits of a number of other employers in Alabama in unrelated businesses concerning unemployment in their own particular businesses during the past several years (R. 182, 208, 226, 230, 251, 255, 258, 267).

In the Gulf States Paper Corporation case, (No. 797) the facts show that it is engaged in the manufacture of kraft paper and kindred products; that it has been so engaged continuously since 1928 (R. 1, 2, 114 in No. 797) that in the year 1934 its operations were closed on two occasions, once for three weeks and once for two weeks on account of flood damages and for general repairs; that in the year 1935 its operations were suspended for about three months on account of a labor dispute. With these exceptions the plant has never been closed for as long as two weeks and such shut downs as have occurred have been at long intervals. (R. 7, 115 in No. 797). That since its establishment the plant has been operated twenty-four hours a day continuously throughout a work week of six days. That it began operation in 1928 with approximately 541 employees, that in 1933 it added approximately two hundred employees, and changed the basis of work from eight hour shifts to six hour shifts and since that time it has continuously employed approximatelly eight hundred men. (R. 7, 115 in No. 797).

That its employees are roughly divided into three groups, viz: (1) salaried employees (2) regular employees working on hourly basis and (3) a smaller group which is called upon for peak or unusual work, which is not permanent and continuous employment. (R. 7, 8 in No. 797). That the turnover in personnel in the first two groups has been small.

A large portion of its products are marketed in interstate commerce. Plaintiff's business has been aided by public donation (R. 64 in No. 797).

Except as noted here, the facts in this case are substantially the same as in the Southern Coal and Coke Company case.

3. The theory of the Bills of Complaint.

The Appellees base their claim for injunctive relief upon the contention that the Alabama Unemployment Compensation Act violates the due process and equal protection clauses of the Fourteenth Amendment, and that Titles III and IX of the Federal Social Security Act violate the Fifth and Tenth Amendments, to the Constitution of The United States.

The Special District Court, in its Conclusions of Law, (R. 296 in No. 724), held that the Alabama Unemployment Compensation Act denied to the Appellees and their employees due process and equal protection of the laws contrary to the provisions of Article I, section 23 of the Constitution of Alabama and of the Fourteenth Amendment to the Constitution of the United States, in that the classification of employers having eight or more employees is entirely arbitrary and that equal protection of the law is not afforded either to employers or employees. The Special District Court declined to pass upon any questions sought to be raised in reference to Titles III and IX of the Federal Social Security Act. (R. 297 in No. 724).

QUESTIONS PRESENTED

1. Whether the Alabama Unemployment Compensation Act (General Acts of Alabama, 1935, p. 950, as amended) violates any provision of the Constitution of Alabama.

2. Whether the Alabama Unemployment Compensation Act violates the due process or equal protection clauses of the Fourteenth Amendment.

3. Whether Titles III and IX of the Social Security Act (49 Stat. 626-639) are valid exercises of the powers delegated to Congress by the Constitution.

As to whether the validity of Title III or Title IX of the Social Security Act is involved in this case, the question is included here for the information of the Court in order to make complete the widest scope of the possible issues in the present litigation.

THE ALABAMA STATUTE

The Alabama Unemployment Compensation Act includes within its scope all employers and employees in establishments employing eight or more individuals, exempting those engaged in agricultural labor, domestic service in a private home, services as officers or members of a crew on a vessel in navigable waters of the United States, services performed for a son, daughter, or spouse, and service by a child under 21 years of age for his father or mother, services performed in the employ of the United States

Government or an instrumentality thereof, services performed in the employ of a state or instrumentality thereof, services performed in the employ of a religious, charitable, educational, scientific or literary body not operated for profit, services performed by employees of interstate carriers subject to the Railway Labor Act, and services performed by solicitors or agents of insurance companies. (Section 2 (g) as amended).

Every employer subject to the Act must contribute an annual sum for 1936, equal to nine-tenths of one per-cent of the total wages payable by him with respect to "employment" to a State fund known as the Unemployment Compensation Fund. Section 4 (b) (The contribution for 1937 will be 1.8 per cent and for 1938, 2.7 per cent.) Each "employee" after May 1, 1936 is required to contribute one percent of his wages. (Section 4 (d) as amended, (Acts 1936, page 227). The entire Unemployment Compensation Fund consists of these contributions.

The benefits are payable to those who establish loss of employment as defined by the law. (Section 6). They must first prove that they have been employed for a specified period in the year or two just preceding the unemployment. (Section 6 (a). The amount and the duration of the benefits are limited (Section 5 (b)) to 50 percent of the prior wage, but no more than $15 a week, and for not more than sixteen weeks (Section 5 (b)). Proportionate benefits are payable for partial unemployment. (Section 5 (c) (d)).

It is to be noted that benefits are payable to an employee only for his weeks of unemployment occurring subsequent to a "waiting period" whose duration must consist of an aggregate of three waiting period-units within the fifty-two weeks preceding the start of a week of unemployment. (Section 6 (c)). A "waiting period-unit" is defined as a period consisting of either one week of total unemployment or two weeks of partial unemployment. (Section 2 (p)). In the event of discharge for "misconduct" the waiting period is longer. (Section 6 (f) as amended). An employee after such period is regarded, however, as a part of the unemployment problem and becomes eligible for benefits. Also an employee who refuses suitable employment loses his claim to benefits for the week in which such refusal takes place and for three weeks thereafter. (Section 6 (g)). An employee whose claim to compensation is denied is entitled to a hearing before the Comission and may appeal its ruling to the courts of this state. (Sections 7, 8).

The contributions are pooled in the State Unemployment Compensation Fund (Section 3)—a central unit of reserve.

By Amendments to Sections 17 and 18, adopted by the legislature in 1936 and 1937, it is provided that in the event the Federal Social Security Act is held invalid by the Supreme Court of the United States or is amended or repealed by the Congress with the result that no portion of the tax levied by the Alabama Act may be credited upon the Federal tax, the Governor shall so proclaim; and that there-

after all moneys deposited in the Unemployment Trust Fund held by the Treasurer of the United States shall be requisitioned by the Alabama Unemployment Compensation Commission and be deposited in the State Treasury and returned ratably to the persons or concerns who had theretofore paid the taxes which went to make up said Unemployment Compensation Fund.

Finally, the Act is administered by the State Unemployment Compensation Commission, with an advisory council composed of representatives of employers, employees and the public (Sections 9, 10). The commission is required to set up, throughout the State, local offices to act as agencies for the payment of benefits and for employment. (Section 10).'

SPECIFICATION OF THE ASSIGNED ERRORS TO BE URGED

The appellants intend to rely upon the contentions that the specially constituted District Court erred:

1. In not granting the defendants' motion to dismiss the bill of complaint.

2. In not dismissing the bill of complaint as prayed in defendants' motion.

3. In not acting upon the defendants' motion to dismiss the bill of complaint.

The Alabama Statute as amended is contained in the appendix filed herewith, at page 5.

4. In perpetually enjoining the defendants from enforcing the Alabama Unemployment Compensation Act against the plaintiffs in any way by requiring contributions, reports or otherwise or by exacting fines, penalties or other punishments of the plaintiffs because of their failure to comply with such Act.

5. In enjoining the defendants from requiring of the plaintiffs the payment of the contributions and the filing of the reports required of them by the Alabama Unemployment Compensation Law.

6. In enjoining the defendants from exacting of the plaintiffs the fines, penalties, or other punishments provided for upon their failure to comply with the Alabama Unemployment Compensation Law.

7. In enjoining the defendants from enforcing the terms and provisions of the Alabama Unemployment Compensation Law against the plaintiffs.

8. In granting an interlocutory injunction enjoining the defendants, pending the final determination of the suit, from enforcing against the plaintiffs the terms, provisions and requirements of the Alabama Unemployment Compensation Law by requiring of the plaintiffs the contributions or reports thereunder or by exacting penalties, fines, taxes or imprisonment and from doing any act by themselves or their agents or representatives in the enforcement of said Law.

9. In holding the Alabama Unemployment Compensation Law to be unconstitutional and void be-

cause in conflict with the Fourteenth Amendment of the Constitution of the United States.

10. In holding the Alabama Unemployment Compensation Law to be unconstitutional and void because in conflict with Article 1, Section 23 of the Constitution of Alabama.

11. In holding the Alabama Unemployment Compensation Law to be unconstitutional and void as denying to the plaintiffs the equal protection of the law.

12. In holding that the Alabama Unemployment Compensation Law is a denial to the plaintiffs of the due process of law in that the classification of employers having eight or more employees is entirely arbitrary.

13. In holding that the classifications of employers contained in the Alabama Unemployment Compensation Law are so arbitrary as to render the Act unconstitutional and void as a denial of due process of law to the plaintiffs.

14. In holding that the plaintiffs have no adequate remedy at law in the premises.

15. In not dismissing the plaintiffs' bills of complaint.

16. In the rendition of the final decree in this cause filed and entered December 15, 1936.

THE REASON FOR UNEMPLOYMENT COMPENSATION

The depression beginning in 1931 brought to the attention of the people, of Congress and of the legislative bodies in the States, the problem of unemployment. The mere number of unemployed alone does not indicate the size of the problem, for to each unemployed worker it is fair to assume that there were at least three persons, dependent on his wages, thrown on the burden of public relief.

The burden was staggering not alone from the point of view of money, but also from that of administration. The problem was not only to find the money to relieve the unemployed, but it was also to find a way to distribute the relief and to give to the unemployed what most of them sought — the opportunity to find work. The United States Government had to assume the greater part of the load of public relief, thus interesting Congress and the administrative officers of the government in the problem of devising some plan which would make the burden in the future less onerous for the public treasury and which could be more effectively administered. Especially lacking in the earlier days of the depression was any facility for applying the work test, that is, for discovering whether the unemployed person seeking relief might not have found a job, which would not only have relieved the drain on the public purse, but would also have maintained his own morale. Those who held responsible positions during the terrible days when the depression was steadily growing worse and the number of unem-

ployed was increasing, or those called upon to take the responsibility of advising public officials, know how the immediate need called upon the energy and judgment of officials who should have been devoting their time to broad plans for coping with problems other than relief, which were confronting the government and the country. It was early perceived in the depression that unemployment was both a state and national problem, in the solution of which both agencies of government in the federal union were called upon to share, each operating in its proper sphere.

Facts Disclosed by the Depression

Hard pressed government officials, business men, labor leaders and experienced administrators in social work, as well as philanthropic societies, turned their attention to the study of the evil of unemployment and bent their efforts to devise some plan for coping with it, a plan which would be within the limitations of our national federal constitution and of the constitutions of the several states. Consideration of the problem made it evident that the depression had not created but had merely intensified the problem, that it was one of the capital problems of mass industry and that it must be dealt with in a permanent way. Unemployment had been a growing and serious result of our rapidly increasing industralization. Industry, even in the golden years of the 1920s, had peaks and hollows of activity with the resultant varying of unemployment which followed closely the ups and downs of the industrial curve, but was always a serious drain upon charity, public and

private. During the 1920s the unemployment varied from 14% in 1922 to 5½% in 1929, the lowest point, and for the other years ran about 8½% of the total number of employable persons. In figures this means that in 1922 there were 2,733,000 unemployed and in 1929 1,181,000 and the average in other years would be over 1,600,000.[1] These figures must, of course, be increased at least three times to get a true picture of the number of persons affected by unemployment, even in the best of times, and even the figures as adjusted, it is believed, are much below the truth, for they take but very roughly into consideration the fact that there were a large number of men unemployed for a month or more who were able to get back to work, but who may have become unemployed again after several months of weekly pay envelopes.

Unemployment has meant and will mean a steady drain on public relief. The expenditures for public relief follow closely up and down the rate of unemployment. This was true, during the period from 1926 through 1929; and when the crisis came in 1930 and was accentuated in 1931 and 1932, the relief expenditures, as is well known, jumped rapidly until the index of employment began to rise once more[2]. There was, therefore, even in years which we look back to as years of prosperity, a heavy burden on public relief caused by unemployment, and this

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[1]Estimates of Robert R. Nathan, Consultant, Committee on Economic Security, quoted in "Economic Brief for Appellees," cited in Chamberlin v. Andrews by the Department of Labor of the State of New York, p. 11, hereafter cited as Economic Brief.

[2]Economic Brief, p. 37.

burden was only a part of the total borne by the community through private charity and through the very much larger drain on relatives, on merchants who continue to supply their customers during periods of unemployment, and on house owners whose rent is unpaid.

What one might call the normal unemployment is a necessary consequence, both of our system of industrialization, particularly on a large scale, and of the fluctuations, seasonal and cyclical, in business. If business were always steady, then the great steel mills in Birmingham, coal mines and other industries, could offer steady employment to a steady group of workers; but this situation never obtains, so that there must always be a pool of unemployed workers from which employers may draw recruits as business improves and into which they return when business is slack.

When industry is booming the great steel mills or automobile factories call into the cities where there are located workmen from other districts in the state and perhaps from other states. When business becomes slack unemployment results, and the cities in which the mills or factories are situated find themselves faced with the duty of taking care of workers often imported from other districts for the benefit of the employer. When a serious depression like that of 1922 or that of 1931 strikes a region, it is the local taxpayers, charitably inclined persons, the smaller shop keepers and the owners of houses the rent for which cannot be paid, and after them the taxpaying farmers and land owners of the whole

state, who must (under the situation which prevailed prior to the enactment of the statute under consideration) provide the money to take care of the relief load.

Another reason for the creation of a system of unemployment compensation lies in the rapid change in employment caused by improvements in machinery which, it is well known, throw men at least temporarily out of work, even in the time when prosperity is at its height. Labor saving machinery is installed in a plant to save labor, but saving labor means creating less employment in the plant. The best evidence of the greater instability of employment during the recent prosperous period of the 1920s as over preceding periods is shown in the fact that:

> Between 1923 and 1929 men were being turned out of manufacturing industries in greater numbers than in pre-war years, while the numbers of new men taken on were relatively much smaller. High productivity and rapidly expanding production brought instability of employment and uncertainty of income to many, during this era of business prosperity.[1]

In a period of prosperity, many men who have lost their positions in factories and in railroads will eventually find work elsewhere but they will not find it promptly and society must bear the burden in one

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[1]R. C. Mills "Economic Tendencies in the United States," National Bureau of Economic Research, Inc., (1932) Cited Economic Brief. pp. 87-88.

way or another of the lapse of time that must ensue while the unemployed person is hunting for work, especially where that work must be found in an occupation different from that at which he was formerly employed.

UNEMPLOYMENT INSURANCE AS A REMEDY

The facts outlined above, both as to the extent and effect of unemployment and as to the inadequacies of existing methods of dealing with the problem, are, and were, at the time of the enactment of the Alabama Act, matters of common knowledge. They had been set forth in reports of the Committee on Economic Security to the President in 1935, in reports of governors and legislative committees in New York State in 1930-1933, and in many books and articles. It is not surprising that officials, both in the Federal and State Governments, sought solutions of the problem in the establishment of systems of unemployment insurance. Similar systems had been tried and found practical in Great Britain and many foreign countries.[1]

Since the Federal Government had been obliged to contribute great sums to relief and had been obliged to assume a large share in the administration of the relief and the effort to put men back to work, the act of Congress, passed after careful consideration of the subject and with full recogni-

[1]Sir William Beveridge, Unemployment, a Problem of Industry (1931).

tion of the importance of preserving the rights and obligations of the states, included a provision allowing a deduction from the federal tax of the amounts paid under any state unemployment insurance law. The Alabama Act is designed to take full advantage of the aid given the various states under the Federal Social Security Act. As a consequence of the act of Congress, the steel industry in the country as a whole is placed on a footing of equality. The percentage of wages which is paid by plants owned by the United States Steel Corporation in Birmingham will be matched by that paid by the same company in Illinois, Indiana or Pennsylvania and by all competing steel companies whether the states where they are located pass acts or not. As a consequence, the steel industry in the country will bear a level burden, so that if the burden proves too heavy it can be shifted to consumers.

Unemployment insurance is designed to meet the problem of unemployment in part by setting up a reserve fund collected during periods of prosperity from employers who were profiting by the business activity, and from employees who presumably shared in the profits of industry in such periods. This reserve fund would, during a depression, relieve the burden on the taxpayers of the city and the state, the great majority of whom had not shared directly in the profits of industrial prosperity, and would facilitate the payment of unemployment benefits without increase in the payments of contributions by employers.

But the unemployment insurance system goes further than the mere maintenance of this great re-

serve, useful as experience has shown it to be in times of emergency. It also will relieve the increasing strain caused by unemployment in ordinary times. The system provided to accomplish this result is set up by the state legislature in its own act and will be enforced solely by state officers with such adjustments as the legislature may introduce in the light of experience. Unemployment insurance is not intended to take care of the idle. It provides only for the man who, although willing to work, cannot find a job. No one can receive benefits unless he can show that he has worked within the state for a specified number of weeks. The amount of his benefits and their duration will be measured by his previous employment. The beneficiary will, therefore, have worked for his benefits and, under the Alabama act under which the employee pays part of the contribution, will have contributed to the fund from which he is paid. More than that, the plan sifts out the man who will not work. An unemployed person asking relief must apply at the employment office of his district, and must accept any suitable employment which is offered him. If he does not do so, he loses the right to receive benefits during the period of his refusal. Clearly a worker cannot be required to act as a strike breaker, and there are other limitations on work which he is required to accept; in principle, however, the system is devised to help only the employee who is willing to work, but for whom a job cannot be found.

The payment of benefits, therefore, will help tide a worker over the period between jobs and will thus relieve the burden which, as has already been

shown, unemployment places on the public. It will not relieve the whole strain, for the amount of benefits is small enough so that the worker himself must bear a large part of the loss in earnings consequent to idleness, a further incentive for him to make use of the opportunities offered to find a job. Furthermore, the benefits of the insurance are not intended to take care of the person who for any reason is unemployed for a long period. He cannot receive in any fifty-two weeks more than sixteen weeks of unemployment benefits. If he cannot find work within this period, he must then be helped in some other way. In ordinary times, however, this period will in most cases be enough to enable the man who loses a job in a manufacturing industry, for example, and who is not likely to get it back, to try to find some position in some service trade where there may be a demand for labor. The employment offices will have it as their duty to encourage him to find new employment. Even during the worst of the depression there were a great many workers who had employment for intervals. Unemployment insurance, by providing a reasonable work test, should greatly improve the chances that in times of depression an unemployed person would be taken off the relief rolls through getting a job, even though temporary.

Another advantage of the system of unemployment insurance is the comparative stabilization of the spending power of industrial workers. The cessation of wages consequent upon unemployment and the resulting decrease of purchasing power of industrial workers is widely recognized as an outstanding feature of economic depressions, and an

important factor with respect to their severity. This stabilization might be statewide in case of a statewide recession in business, or it might be local in case a plant in a particular city slowed down or went out of business. The drafts upon the reserve fund would maintain for a period the spending power of men thrown out of work and therefore the returns from business of the shop keepers and house owners who depend upon this spending.

It may be argued that there are certain plants which have shown steady employment during the last few years. No one can be sure that these plants will continue to have such good fortune. At any time a change in style of product, a rapid increase in the number of plants in a particular field, may bring about a decline in the business and profits of a particular plant which had previously been prosperous, with the result that a number of its workers will be thrown unexpectedly into the class of the unemployed. If a plant has a better employment record than others, the act provides for a reduction in the amount to be paid as contribution, and the federal act, with a corresponding provision, will provide for a reduction in the tax, so that the employer who benefits by the credit rating under the state law will not find that benefit nullified by the requirements of the federal law. The federal provision, however, takes effect only after three years of compensation experience. (Sec. 910 (a) (1)). Under the Ala-

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Note—We refer for economic facts to the Economic Brief for Appellees filed in this Court by the Attorney General of the State of New York in the case of W. H. H. Chamberlin v. Elmer F. Andrews, Industrial Commissioner of the State of New York, et al. October Term, 1936.

bama Act experience rating is permitted in 1941, so that the date fixed by the Alabama law for the beginning in rates based on experience approximates to the provisions of the federal law.

SUMMARY OF ARGUMENT

Three propositions are urged by the State in answer to the contention that the Alabama Unemployment Compensation Act violates the due process and equal protection clauses of the Fourteenth Amendment:

1. *The cost of unemployment compensation may be placed on industry.*

In support of this contention, the State, after pointing out the reasons for unemployment compensation (p. 16), relies upon the analogy of workmen's compensation laws, treating the cost of industrial accidents as part of the cost of production —just as the present law treats the cost of industrial unemployment as part of the cost of production (Arizona Employer's Liability Cases, 250 U. S. 400.) The State further relies upon precedents in the form of minimum wage laws, bank deposit guaranty laws and similar legislation (West Coast Hotel Co. v. Parrish, U. S. ...., decided March 29, 1937; Noble State Bank v. Haskell, 219 U. S. 104, to show that contributions may be exacted of a group whose activities are reasonably related to the conditions to be relieved, even though, in the first instance, the benefits accrue to a different group of individuals.

2. *The classifications in the Act are valid.*

Employers of less than eight are shown to be exempted from the operation of the Act upon the ground that unemployment is less prevalent in small establishments than in large ones, and the exemption is sustained upon the principle that the legislature has power to draw the line somewhere, hitting the evil "where it is most felt" (West Coast Hotel Co. v. Parrish, supra.) The exclusion of specified occupations such as agricultural labor and domestic service rests upon numerous cases upholding statutes which grant identical exemptions (New York Central Railroad Co. v. White, 243 U. S. 188). Further support for these basic classifications comes from a practical consideration of the administrative workability of the statute, recognizing that the collection of contributions from small employers, farmers, housewives, etc., is almost an insuperable difficulty at the present time (Hatch v. Reardon, 204 U. S. 152).

3. *The pooling of funds is permissible.*

Railway Retirement Board v. Alton Railroad, 295 U. S. 330, is not only distinguished, but is shown to support the pooled fund established in the Alabama Act. It, together with other cases, reveals that the pooling of funds, if reasonable, is a legitimate administrative device, and that pooled funds will be condemned only when based upon a disregard of known facts. The scarcity of information as to the probability of future unemployment

in any given plant or industry shows that the legislature has adopted a wise and cautious policy, rather than a capricious one, and that it has done all that it can safely do by its provision for "merit rating" after the year 1941.

Point I deals briefly with the question of the validity of the Act under the Alabama constitution, pointing out that the decision by the Supreme Court of Alabama on March 18, 1937, in the case of Beeland Wholesale Co. v. Kaufman, makes it necessary for this court to reverse the holding of the court below on matters involving the state constitution. Point III is confined to the contention that the Social Security Act is not an invasion of the powers of the State of Alabama. The argument for the validity of Title III and Title IX of that Act will be made by the Government.

ARGUMENT

I.

THE ALABAMA UNEMPLOYMENT COMPENSATION ACT DOES NOT VIOLATE ANY PROVISION OF THE CONSTITUTION OF ALABAMA.

In view of the supervening decision by the Supreme Court of Alabama in Beeland Wholesale Co. v. Kaufman, decided March 18, 1937, and now in manuscript, the full text of which appears in the

Appendix, p. 43, that the Alabama Act is valid and free of any objection under the state constitution, the holding by the court below can no longer stand. Chicago, M. St. P. & P. R. Co. v. Risty, 276 U. S. 567, 570; Hawks v. Hamill, 288 U. S. 52.

II.

THE ALABAMA UNEMPLOYMENT COMPENSATION ACT DOES NOT VIOLATE THE REQUIREMENTS OF DUE PROCESS OF LAW OR EQUAL PROTECTION OF THE LAWS UNDER THE FOURTEENTH AMENDMENT.

The basic problem as to the validity of the Alabama Unemployment Compensation Act is whether it is unreasonable, arbitrary or capricious, and whether the means selected have a real and substantial relation to the object sought to be attained. The specific questions involved in this inquiry are: 1. May the cost of a system of unemployment compensation be placed upon employers and employees? 2. Are the classifications in the Act valid? 3. Is the pooling of funds permissible?

1. *The Cost of Unemployment Compensation May Be Placed on Industry.*

The main force of the attack on the Alabama Act is that it imposes a heavy burden on industry, particularly upon employers, for the benefit of others. The justification for placing the cost upon industry

lies in the close factual connection between industry and unemployment, and in the well-recognized principle that contributions may be exacted of a general group or class whose activities are reasonably related to the conditions to be relieved, even though the benefit may, in the first instance, be conferred upon a particular group or class.

As was said in the recent case sustaining minimum wage legislation:

> "What these workers lose in wages the taxpayers are called upon to pay. The bare cost of living must be met. We may take judicial notice of the unparalleled demands for relief which arose during the recent period of depression and still continue to an alarming extent despite the degree of economic recovery which has been achieved. It is unnecessary to cite official statistics to establish what is of common knowledge through the length and breadth of the land. . . The community is not bound to provide what is in effect a subsidy for unconscionable employers." West Coast Hotel Co. v. Parrish, ... U. S. ....., (decided March 29, 1937).

The success of the device for making industry pay the costs of industry is demonstrated by the workmen's compensation cases. The present statute, recognizing that the cost of industrial unemployment is, like the cost of industrial accidents, a part of the cost of industry, merely embodies and applies the principle of workmen's compensation.

> "It is reasonable that the business should pay the whole cost of producing what it wants and a part of that cost is the pain and mutilation incident to production. By throwing the loss upon the employer in the first instance we throw it upon the people in the long run and that is just. If a Legislature should reason in this way and act accordingly it seems to me that it is within Constitutional bounds." Arizona Employers' Liability Cases, 250 U. S. 400, 433.

See also Mountain Timber Co. v. Washington, 243 U. S. 219, sustaining the Workmen's Compensation Act of the State of Washington. And in Sheehan v. Schuler, 265 U. S. 371 (holding that the employer of a deceased workman, if no person was entitled to benefits under the New York Compensation Act, might be made to pay $1000 into a state fund, half of which was to be used for paying additional compensation to employees incurring permanent total disability after permanent partial disability, and half for vocational rehabilitation), this Court said:

> "We do not think that the due process clause of the Fourteenth Amendment requires that such additional compensation to injured employees of the specified classes should be paid by their immediate employers, or prevents the legislature from providing for its payment out of general funds so created."

Other examples of statutes which have required contributions of a group whose activities are closely related to the situation confronting the legislature, even though the immediate benefits thereof inure to other individuals, are familiar. In Noble State Bank v. Haskell, 219 U. S. 104, this Court sustained an Oklahoma statute which assessed every bank one per cent of its average daily deposits to create a fund out of which to secure full repayment of the deposits in any bank that failed. Justice Holmes speaking for the Court wrote:

> "In the first place it is established by a series of cases that an ulterior public advantage may justify a comparatively insignificant taking of private property for what in its immediate purpose is a private use. Clark v. Nash, 198 U. S. 361, 25 S. Ct. 676, 49 L. Ed. 1085, 4 Ann. Cas. 1171; Strickley v. Hyland Boy Gold Mining Co., 200 U. S. 527-531, 26 S. Ct. 301, 50 L. Ed, 581, 4 Ann Cas. 1174; Offield v. New York, New Haven and Hartford Railroad Co., 203 U. S. 372, 27 S. Ct. 72, 51 L. Ed. 231; Bacon v. Walker, 204 U. S. 311, 315, 27 S. Ct. 289, 51 L. Ed. 499. And in the next it would seem that there may be other cases beside the every day one of taxation in which the share of each party in the benefit of a scheme for mutual protection is sufficient compensation for the correlative burden that it is compelled to assume. Ohio Oil Co. v. Indiana, 177 U. S. 190, 20 S. Ct. 576, 44 L. Ed. 729. At least, as we have a case within the reasonable exercise of the police power as above expressed no more need be said."

The doctrine of the Oklahoma bank cases is not limited to the relatively small assessment of 1 percent. By an act passed after the suit was begun the assessment was increased to 5 percent. Moreover, it appears from the opinion that "additional assessments if required" might be made for the purpose of paying depositors in full. For a further illustration of the operation of bank deposit guaranty laws and the substantial burden imposed under them, see Abie State Bank v. Bryan, 282 U. S. 765 (1931).

The Head Money cases, 112 U. S. 580, sustained a statute by which Congress imposed a tax on steamship companies of fifty cents for each alien brought into the United States, to be paid by the owner of the ship transporting such aliens. The money was paid into a special fund to be used for the care and relief of immigrants who might become indigent and therefore a public burden. State v. Cassidy, 22 Minn. 312, upheld a tax on saloonkeepers to create a fund for the erection and maintenance of an institution for inebriates. The dog tax cases, upheld state acts imposing a tax upon dogs in order to create a fund out of which to pay sheep owners for losses suffered by the killing of their sheep by dogs, the tax being imposed upon all dog owners, without regard to the question whether their particular dogs are responsible for the loss of sheep. Cole v. Hall, 103 Ill. 30. It has also frequently been held that fire insurance companies may be required to contribute to and maintain a fund for the benefit of sick and disabled firemen. Fire Department v. Helfenstein, 16 Wis. 136.

Finally the principle of cost allocation illustrated in the preceding cases was accepted and applied in four cases sustaining respectively, the unemployment compensation laws of Massachusetts, New York, California and Alabama (Howes Bros. v. Unemployment Compensation Commission, ... Mass. ..... (.....); Chamberlin v. Andrews, 271 N. Y. 1 (1936), affirmed by an equally divided court, 57 Sup. Ct. 122 (1936); Gillum v. Johnson, 62 P (2d) 1037 (1936); Beeland Wholesale Co. v. Kaufman, ... Ala. ..... (1937)).

2. *The Classifications in the Alabama Act are Valid.*

The contention that the Alabama Act violates the guaranty of equal protection of the laws centers on the exemption of certain classes of occupations from the coverage of the statute and the exclusion of employers who have less than eight workers in their employ.

The exempt occupations are set forth in the margin.[1] The only one of them with reference to which

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[1] (1) Agricultural labor;

(2) Domestic service in a private home;

(3) Service performed as an officer, bar pilot, or member of the crew of a vessel on the navigable waters of the United States.

(4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(5) Service performed in the employ of the United States Government or of an instrumentality of the United States;

(6) Service performed in the employ of a carrier engaged in interstate commerce and subject to the Act of Congress known as The Railway Labor Act; as amended or as hereafter amended. Service

any serious contention is made, is agricultural labor. This exemption is identical with that found in workmen's compensation laws, which have uniformly been sustained. In New York Central Railroad Company v. White, 243 U. S. 188, this court said:: "The exclusion of farm laborers and domestic servants from the scheme of the Act may not be judicially declared an arbitrary classification within the protection of the law." Similarly with regard to the other occupations not covered by the Act. For example, the exemption of charitable organizations, domestic service, and services within the family relationship are of a type long familiar to the Federal Income Tax Laws and were expressly upheld in Flint v. Stone Tracy Co., 220 U. S. 107. Classifications of this character are equally valid under state laws. See Aero Transit Co. v. Georgia Commission, 295 U. S. 285; Utah Power and Light Co. v. Pfost, 286 U. S. 165.

The division of employers into those who employ eight or more workers and those who employ less

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performed by those engaged as solicitors or agents for Insurance Companies.

(7) Service performed in the employ of a state or political subdivision thereof, or an instrumentality of one or more states or political subdivisions;

(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

[Sec. 2(g) of the Alabama Act.]

than eight requires somewhat fuller consideration.[1] This classification is based upon the widely held belief that large firms experience more severe fluctuations in employment than small ones. The only available studies of this subject sustain the belief. National Industrial Conference Board, Inc. *Mergers in Industry*, 1929, King, Williford I., *Employment, Hours and Earnings in Prosperity and Depression*, 1923; Hansen, A. H., Bjornaraa, D., and Sogge, T. M., *Decline in Employment in the* 1930-31 *Depression in St. Paul, Minneapolis and Duluth*, 1932. Hansen N. H. et al., *A Program for Unemployment Insurance and Relief in the United States*,. 1934, pp. 33-39. Whatever be the exact facts and figures, it cannot be said that the legislative conclusion that the small employer does not contribute substantially to the real unemployment problems is either entirely capricious or lacks any reasonable basis. As said in Borden's Farm Products Company, Inc. v. Peter G. Ten Eyck, 80 L. Ed. 669, 297 U. S. 251; 56 S. Ct. 453: "Judicial inquiry does not concern itself with the accuracy of the legislative finding, but only with the question whether it so lacks any reasonable basis as to be arbitrary."

Classifications based on size or number within a generic group have been sustained. Bradley v. Rich-

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[1](f) "Employer" means any person, partnership, association, corporation, whether domestic or foreign, or the legal representative, trustee in bankruptcy, receiver, or trustee thereof, or the legal representative of a deceased person, who or whose agent or predecessor in interest has employed **at least eight persons** in employment subject to this Act within each of twenty or more calendar weeks in the year 1935 or any subsequent calendar year. [Section 2(f) of the Alabama Act.]

mond, 227 U. S. 477; Metropolis Theatre Co. v. Chicago, 228 U. S. 61; Quong Wing v. Kirkendall, 223 U. S. 59. "This court has frequently held that the legislative authority, acting within its proper field, is not bound to extend its regulation to all cases which it might possibly reach. The legislature 'is free to recognize degrees of harm and it may confine its restrictions to those classes of cases where the need is deemed to be clearest.' If 'the law presumably hits the evil where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied." West Coast Hotel Co. v. Parrish, ... U. S. ..... (decided March 29, 1937). It was necessary to draw the line somewhere. In like situations, this Court has held that it is within the discretion of the legislative body to designate the number which constitutes the dividing line. Jeffrey Mfg. v. Blagg, 235 U. S. 571, (classification of five or more employees). St. Louis Cons. Coal Co. v. Illinois, 185 U. S. 203 (exempting mines employing not more than five men); McLean v. Arkansas, 211 U. S. 539, (exempting mines employing less than ten men underground).

Furthermore, the classifications in the Act, including both the exemption of employers of less than eight individuals and the exemption of certain occupations, are based on and justified by practical administrative considerations. The difficulties in requiring the maintenance of proper records by employers of a few employees, and the almost impossible task in the case of housewives or farmers, give an adequate basis for the distinction. The expense of collection might well exceed the contributions re-

ceived and collectible. Similarly with respect to agents or solicitors of insurance companies, the difficulties in determining the wages justify the exemption. This Court has long recognized that the public need for practicability, speed, and convenience in the administering of a statute will often justify certain minor inequities which might have been avoided in a more "perfect" but less workable plan. New York v. Latrobe, 279 U. S. 421; Hatch v. Reardon, 204 U. S. 152.

3. *The pooled fund established by the Alabama Act is valid.*

The Alabama Act requires all employers of eight or more to pay the same percentage of their pay rolls into the Unemployment Compensation Fund, thus, it is contended by the appellees, treating alike those who are dissimilarly situated. The appellee's chief, if not sole, reliance in this respect is Railroad Retirement Board v. Alton Railroad, 295 U. S. 330. But the difference between the two Acts involved makes the Railroad Retirement Case inapplicable, and the authorities sustaining pooling in other situations applicable.

The Railroad Retirement Case does not condemn *all* pooling. Prior decisions, which have sustained the pooling principle when properly applied (e. g. Mountain Timber Co. v. Washington, supra, and Noble State Bank v. Haskell, supra) were cited with approval in the Pension Case, and their holdings reaffirmed. When the objectionable features enumerated in that case are analyzed, it is seen that each

of them has its fundamental basis, not in the existence of a pooled fund, but in the failure of the framers of the Railroad Pension Act to heed known and available information which, if it had been considered by the Congress as it was considered by the Court when presented in litigation, would have shown disparities between the contributors so great as to make equal contributions from them an unreasonable requirement. Pooling in and of itself is not a violation of due process. This is apparent from the very words of the court in distinguishing the Mountain Timber Company case: "The challenge of the employers was that the statute failed of equitable apportionment as between the constituted classes. But no proof was furnished to that effect, and this court assumed that the classification was made in an effort at fairness and equity as between classes." (at p. 359.)

Whether the grouping together of all employers of eight or more under the Alabama Act is "made in an effort at fairness and equity" may be seen from the Act itself. In the first place, *all* employers are not treated alike: only employers of eight or more are covered. Hence there is some classification. It is a classification based upon the knowledge that the unemployment hazard is greater in large concerns employing many workers than in small concerns employing few. Furthermore, provision is made in the Act for a closer correlation in the future between the amount of contribution required of any given employer and the unemployment hazard created by the industry of which he is a part. Section 4 of the act provides that rates of contribution, after 1941, are

to be based upon a classification of employers according to unemployment hazard, which classification is to be made by the commission upon the basis of past experience. It is interesting to note in this regard that the New York act involved in Chamberlin v. Andrews, did not contain such an explicit provision for merit rating as is contained in the Alabama act. The New York act merely provided that the Commission was to study the feasibility of merit rating. The Federal Social Security Act, it will be remembered, allows credit for merit-rating in deduction from the payroll tax only on the basis of three years of compensation experience, that is, in no case before the year 1941 (Sec. 910, Federal act). Hence merit rating before that time would be of no value to employers of Alabama.

A further justification for the pooling of funds at the present time is the fact that dependable information is scarce—indeed practically non-existent—as to the unemployment hazard in Alabama. While it is not to be denied that variations in unemployment exist as between different firms and industries, the future amount of unemployment in any given establishment cannot now be accurately judged. Style trends, new competitors, technilogical changes, tariffs and other factors causing unemployment appear, on the basis of present information, as likely to affect one business as another. The legislature cannot be blamed for failing to make nice distinctions when to do so would be to make the rates of contribution levied dependent upon sheer guess work. "The Fourteenth Amendment is not a pedagogical requirement of the impracticable,"

Holmes, J., in Dominion Hotel, Inc. v. State of Arizona, 249 U. S. 265, 268 (1919). Nor is it a mandate requiring mathematical perfection. "Perfect uniformity and perfect equality of taxation, in all the aspects in which the human mind, can view it, is a baseless dream, as this court has said more than once." Head Money cases, supra, at p. 595. When the information as to unemployment hazard becomes available through past experience the rates of contribution will be varied in accordance therewith. This is specifically provided for in the act. To hold that an unemployment compensation plan could not be put into effect until a reliable system of "merit rating" could be devised would be to permanently enjoin the establishment of an unemployment insurance system for the lack of immediate perfection in detail.

Another factor establishing the reasonableness of the grouping together of employers of eight or more is the necessity of having a fund of this character in order to provide a broad base upon which reserves may be accumulated, and in order to lessen the dangers of serious drains on its resources during severe periods of unemployment. Hence, in the exercise of its discretion, the legislature provided a two-year period for the accumulation of a reserve fund before the making of payments; this avoids any drain on the funds until a sufficient sum is available to make the payments which may be required.

Finally, the absence of a more definite classification of employers than now exists under the Alabama act is justified by a realistic view of the prob-

lem of unemployment. The mere fact that an employer discharges a workman does not show that that employer is the one responsible for the unemployment. The causes of unemployment are far deeper. They relate to business as a whole. This is illustrated by contrasting the "consumer goods industries," which are reputed to cause very little unemployment, with the "durable goods industries," which are often said to be the major offenders. Even though dealers in consumer goods keep all their workers employed during a depression, their volume of sale and hence of purchase from the stable goods industries may be greatly diminished. Who is to blame for the resulting unemployment in the "durable goods" industries? If a public utility company constructs a hydro-electric plant, ceasing its consumption of coal, and the coal miner from whom the utility formerly purchased is forced to discharge his workmen, who should be considered responsible for the unemployment? The decision of the Alabama Legislature to move slowly and to treat alike for the time being all employers of eight or more seems to demonstrate, not that the legislation under consideration is "unreasonable," but rather that it is the result of a sound and cautious legislative policy. The highest courts of Massachusetts, New York, and California, have found nothing unreasonable in their Unemployment Compensation Acts, based on pooled funds in all essentials the same as that established in the Alabama Act.

III

TITLE III AND TITLE IX OF THE SOCIAL SECURITY ACT ARE WITHIN THE DELEGATED POWERS OF THE CONGRESS AND DO NOT VIOLATE ANY LIMITATIONS UPON THOSE POWERS.

The argument on the merits for the validity of Title III and Title IX will be presented by the Government in its brief in George C. Steward Machine Company v. Davis, Collector of Internal Revenue and at the bar. We support that argument.

In the court below, as well as in the Supreme Court of Alabama, we contended that the Alabama Unemployment Compensation Act was independent of the Social Security Act and that it was not necessary for the validity of the federal Act to be determined in order to settle the validity of the state law. But the Supreme Court of Alabama has since decided (see the opinion in the Beeland case, appendix, p. 43, delivered on March 18, 1937) that the Alabama statute is dependent upon the federal Act and that it was necessary for that Court to express its opinion as to the validity of the unemployment features of the federal Act. The court then concluded that the tax levied under Title IX upon certain employers is valid whether deemed independent of or as unified with the appropriation made under Title III as an aid to the State in the administration of its unemployment compensation law.

In the language of the Supreme Court of Alabama, the Alabama Act "ties into" the federal Act and "forms a part of a nation-wide economic scheme" provided for by the latter. "Unless it is tied up to such a wide-spread program, it probably could not have the influence on economy which is the foundation for its existence. It would be useless, perhaps, for one state to try to effect economic stability in respect to a situation which knows no state boundaries."

In view of the decision of the Supreme Court of Alabama, we no longer contend that the state statute is independent of the federal Act. Without arguing whether it is or is not necessary for this Court to pass upon the validity of the federal Act in order to dispose of the cases at bar, we suggest that it is in the interest of the State to have the validity of the plan of unemployment compensation settled to the extent that it is permissible to settle it in the cases now before this Court.

We have uniformly contended that Titles III and IX of the Social Security Act are within the delegated powers of Congress and that they do not violate any limitations upon those powers. Particularly do we urge, as supplementary to the Government's argument, that Title III and Title IX, taken singly or together, do not invade the reserved powers of Alabama. The unemployment compensation features of the Social Security Act avoid the defects of other statutes which have been condemned by this Court as in violation of the powers of the States. Here

there is no overreaching of the state government, nor any coercion on that government. There is no attempt by the central government to control the individual. There is no disruption of the Federal system. On the contrary, here is a cooperative plan, designed to bring out the full advantages of the Federal system, and fitted to the form of government established by the Constitution. It is the law of the state which establishes the system of unployment compensation in Alabama.

CONCLUSION

On the basis of the authorities and decisions hereinabove cited and quoted from, we respectfully submit that the special District Court erred and that its decree should be reversed.

A. A. CARMICHAEL,
Attorney General of Alabama.

NICHOLAS E. STALLWORTH,
JOSEPH P. CHAMBERLAIN,
NOEL T. DOWLING,
Special Assistants to the
Attorney General of Alabama.

CHARLES L. ROWE,
PEYTON D. BIBB,
THOMAS S. LAWSON,
Assistant Attorneys General.

ATTORNEYS FOR THE APPELLANTS.

I hereby certify that I have delivered a copy of the foregoing brief and argument to the counsel of record for the appellees in the above styled cases.

This the ..... day of April, 1937.

.....
of Counsel.

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Supreme Court of the United States

OCTOBER TERM, 1936

NO. 724

ALBERT A. CARMICHAEL, AS ATTORNEY GENERAL FOR THE STATE OF ALABAMA, ET. AL., Appellants.

vs.

THE SOUTHERN COAL & COKE COMPANY, Appellee

NO. [illegible]

ALBERT A. CARMICHAEL, AS ATTORNEY GENERAL FOR THE STATE OF ALABAMA, ET. AL., Appellants.

vs.

GULF STATES PAPER CORPORATION, Appellee.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FROM THE MIDDLE DISTRICT OF ALABAMA

APPENDIX

To Brief of Appellants

Supreme Court of the United States

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APPENDIX

To Brief of Appellants.

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APPENDIX

ALABAMA GENERAL LAWS

(Regular Session, 1935)

No. 447) (S. 395—Stephens.

AN ACT

To create a system of unemployment compensation; to provide for an unemployment compensation fund; to provide for contributions to such fund; to provide for benefit payments, from such funds; to provide eligibility conditions for such benefits; to provide for the settlement of benefit claims; to provide for judicial review of disputed benefit claims; to create an Unemployment Compensation Commission and to provide for its appointment, compensation and prescribe its powers and duties; to provide for the appointment and compensation of other employees and the maintenance and other expenses of such commission; to authorize reciprocal benefit arrangements with other states or the Federal Government; to prohibit the waiver of rights and benefits arising hereunder; to limit attorney's fees in cases arising under this act; to regulate alienation of benefits; to provide penalties for failure to comply

As Amended by ACT No. 156 April 21, 1936

with or violations of this act; to establish an unemployment administration fund; to appropriate funds to maintain the same; and to retain the right to amend or repeal this act.

Be it enacted by the Legislature of Alabama:

Section 1. SHORT TITLE. This Act shall be known and may be cited as the "Unemployment Compensation Law."

Section 2. DEFINITIONS. The following words and phrases, as used in this Act, shall have the following meanings unless the context clearly requires otherwise:

(a) "Benefits" means the money payable to an employee as compensation for his wage losses due to unemployment as provided in this Act.

(b) "Commission" means the Unemployment Compensation Commission established by this Act, or its authorized representative.

(c) "Contributions" means the money payments to the State Unemployment Compensation Fund required by this Act.

(d) Eligibility. An employee shall be deemed "eligible" for benefits for any given week of his partial or total unemployment (occurring subsequent to any required waiting period) only when he is not disqualified by any provision of this Act from receiving benefits for such week of unemployment.

(e) "Employee" means any person employed by an employer subject to this act and in employment subject to this Act.

(f) "Employer" means any person partnership, association, corporation, whether domestic or foreign, or the legal representative, trustee in bankruptcy, receiver, or trustee thereof, or the legal representative of a deceased person, who or whose agent or predecessor in interest has employed at *least eight persons* in employment subject to this Act within each of twenty or more calendar weeks in the year 1935 or any subsequent calendar year; provided that such employment in 1935 shall make an employer subject on January 1, 1936, and such employment in any subsequent calendar year shall make a newly subject employer subject for all purposes as of January first of the calendar year in which such employment occurs. In determining whether an employer (of any person in the state) employs enough persons to be an "employer" subject hereto, and in determining for what contributions he is liable hereunder, he shall whenever he contracts with any contractor or subcontractor for any work which is part of his usual trade, occupation, profession, or business, be deemed to employ all persons employed by such contractor or subcontractor on such work, and he alone shall be liable for the contributions measured by wages paid to such persons for such work; except as any such contractor or subcontractor, who would in absence of the foregoing provisions be liable to pay said contributions, accepts exclusive liability for said contributions, under an

agreement with such employer made pursuant to general commission rules. All persons thus employed by an employer (or any person) within the State, in all of his several places of employment maintained within the state, shall be treated as employed by a single "employer" for the purposes of this Act; provided, moreover, that where any person, partnership, association, corporation, whether domestic or foreign, or the legal representative, trustee in bankruptcy, receiver, or trustee thereof or the legal representative of a deceased person either directly or through a holding company or otherwise, has a majority control or ownership of otherwise separate business enterprises employing persons in the state, all such enterprises shall be treated as a single "employer" for the purposes of this Act. Any employer subject to this Act shall cease to be subject hereto only upon a written application by him after a finding by the commission that he has not within any calendar week within the last completed calendar year employed eight or more persons in employment subject hereto. Any employer (of any person within the state) not otherwise subject to this Act shall become fully subject hereto upon filing by such employer with the commission of his election to become fully subject for not less than two calendar years, subject to written approval of such election by the commission.

(g) "Employment" means any employment in which all or the greater part of the person's work (within the continental United States) is or was

customarily performed within this State, under any contract of hire, oral or written, express or implied, whether such person was hired and paid directly by the employer or through any other person employed by the employer, provided the employer had actual or constructive knowledge of such contract. Such employment shall include the person's entire employment (in all states, including the District of Columbia). In the case of all other persons employed partly in this state and partly in other states, the commission is authorized, with the approval of the Governor, to enter into reciprocal arrangements with other states as to the extent the employment of such persons shall be included under this definition. The term "employment" shall not apply to:

As Amended by ACT No. 194 April 21, 1936

(1) Agricultural labor;

(2) Domestic service in a private home;

(3) Service performed as an officer, bar pilot, or member of the crew of a vessel on the navigable waters of the United States.

(4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(5) Service performed in the employ of the United States Government or of an instrumentality of the United States;

(6) Service performed in the employ of a carrier engaged in interstate commerce and subject to the Act of Congress known as The Railway Labor Act; as amended or as hereafter amended. Service performed by those engaged as solicitors or agents for Insurance Companies.

(7) Service performed in the employ of a state, or political subdivision thereof, or an instrumentality of one or more states or political subdivisions;

(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(h) "Employment Office" means that free public employment office (operated by the state) or branch thereof nearest to the employee's place of residence or employment, unless otherwise prescribed by the commission.

(1)[1] An employee's "full-time weekly wage" means the weekly earnings such employee would

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[1]Amended by Act of March 1, 1937, to read as follows:

Section 2 (i). The "full-time weekly wage" of any individual means the weekly wages that such individual would receive if he were employed at the most recent wage rate earned by him for employment by an employer during the period prescribed pursuant to paragraph (3) of this subsection, and for the customary scheduled full-time weekly hours prevailing for his occupation in the enterprise in which he last earned wages for employment by employer during the same period.

average from his employment if employed at the "hourly rate of earnings" and for the "full-time weekly hours" applicable to such employee.

(1) The applicable "hourly rate of earnings" shall be determined by averaging the employee's actual earnings for at least three hundred hours of employment by his most recent employers.

(2) An employee's "full-time weekly hours" shall mean the standard maximum weekly hours which can lawfully be worked by the employee (in the employment in question) under any code of fair competition or under any applicable state law specifying lower maximum weekly hours or agreement. Where there is no code, law or agreement applicable, the commission shall determine the employee's full-time weekly hours by averaging his weekly hours for all calendar weeks (in at least the past three months) in which he worked thirty hours or more, or by such equitable method as the commission may by general rule prescribe for determining

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(2) If the commission finds that the full-time weekly wage, as above defined, would be unreasonable or arbitrary or not readily determinable with respect to any individual the full-time weekly wage of such individual shall be deemed to be one-thirteenth of his total wages for employment by employers during that quarter in which such total wages were highest during the period prescribed pursuant to paragraph (3) of this subsection.

(3) The full-time weekly wage of any individual shall be determined and redetermined at such reasonable times as the commission may find necessary to administer this act and may by regulation prescribe. The period hereinabove referred to shall consist of the next to the last completed calendar quarter immediately preceding the date with respect to which an individual's full-time weekly wage is determined, and such of the seven immediately preceding consecutive calendar quarters as the commission may by regulation prescribe.

a full-time standard of not less than *thirty weekly hours for benefit purposes.* In the case of an employee who is found by the commission, at the time he becomes eligible for benefits, to be unable by reason of physical disability or by reason of continuing personal obligations (other than employment) to work half the full-time weekly hours which prevail in such establishment for full-time employees, the commission shall determine his full time weekly hours for benefit purposes by averaging his weekly hours for all weeks (in at least the past three months) in which he worked.

(j) "Fund" means the Unemployment Compensation Fund established by this Act, to which all contributions and from which all benefits required under this Act shall be paid.

(k) "Partial Unemployment". An employee shall be deemed "partially unemployed" in any calendar week of partial work if he fails to earn in wages (and/or any other pay for personal services, including net earnings from self-employment) for such week at least one dollar more than the amount of weekly benefits for total unemployment he might receive if totally unemployed and eligible.

(l) "Payroll" means the total amount of all wages payable by the employer to his employees, commencing with wages payable for employment occurring after the employer becomes newly subject to this Act.

(m) "Total Unemployment". An employee shall be deemed "totally unemployed" in any calendar week in which he performs no wage-earning services whatsoever, and for which he earns no wages (and no other pay for personal services, including net earnings from self-employment,) and in which he cannot reasonably return to any self-employment in which he has customarily been engaged.

(n) "Unemployment Administration Fund" means the Unemployment Compensation Administration Fund established by this Act.

(o) "Wages" means every form of remuneration for employment received by a person from his employer[1], including salaries, commissions, bonuses, and the reasonable money value of board, rent, housing, lodging, payments in kind, and similar advantages.

(p) "Waiting-period-unit" means a period (for which no benefits are payable but during which the employee is in all other respects eligible)[2] consisting of either one week of total unemployment or two weeks of partial unemployment, required as a condition precedent to the receipt of benefits for subsequent unemployment, as prescribed in this Act.

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[1]"Whether paid directly or indirectly by the employer" added by Act of March 1, 1937.

[2]"Except for the Requirements of section 6(a)" added by Act of March 1, 1937.

(q) "Weeks" means calendar week ending at midnight Saturday, or any equivalent period approved by the Commission. As Amended by ACT No. 194 April 21, 1936

(r)*. "Week of employment" means each calendar week occurring at least one year after contributions first became generally due under this Act from employers then subject hereto, within which the person in question performed any employment subject to this Act for any employer or employers subject to this Act, and was not partially unemployed as defined in Section 2(k). As Amended by ACT No. 194 April 21, 1936

Section 3. UNEMPLOYMENT COMPENSATION FUND: (a) Fund. There is hereby created the Unemployment Compensation Fund, to be administered by the commission without liability on

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*Amended by Act of March 1, 1937 to read as follows:

(r) "Base Period" means the period beginning with the first day of the nine completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding any week with respect to which benefits are payable.

(s) "Benefit Year", with respect to any individual, means the fifty-two consecutive-week period beginning with the first day of the week with respect to which benefits are first payable to him, and thereafter the fifty-two consecutive-week period beginning with the first day of the first week with respect to which benefits are next payable to him after determination of his last preceding benefit year.

t) "Calendar Quarter" means the period of the three calendar consecutive-months ending on March 31, June 30, September 30, or December 31, excluding however, any calendar quarter or portion thereof which occurs priod to January 1, 1937, or the equivalent thereof as the commission may by regulation prescribe.

(u) "Weekly Benefit Amount" means the amount of benefits an employee is entitled to receive for one week of total unmployment.

the part of *the state beyond* the amounts paid into and earned by the fund. This fund shall consist of all contributions and money paid into and received by the fund as provided by this Act, of property and securities acquired by and through the use of moneys belonging to the fund, and of interest earned upon the moneys belonging to the fund.

(b) Withdrawals. The fund shall be administered in trust and used solely to pay benefits, upon vouchers drawn on the fund by the commission pursuant to general commission rules and no other disbursement shall be made therefrom. Such rules shall be governed by and consistent with any applicable constitutional requirements, but the procedure prescribed by such rules shall be deemed to satisfy (and shall be in lieu of) any and all statutory requirements, (for specific appropriation or other formal release by state officers of state moneys prior to their expenditure) which might otherwise be applicable to withdrawals from the fund.

(c) Treasurer. The commission shall designate a treasurer of the fund, who shall pay all vouchers duly drawn upon the fund, in such manner as the commission may prescribe. He shall have custody of all moneys belonging to the fund and not otherwise held or deposited or invested pursuant to this act. The treasurer shall give bond conditioned on the faithful performance of his duties as treasurer of the fund, in a form prescribed by statute or approved by the attorney general, and in an amount specified by the commission and approved by the governor. All premiums upon bonds required pur-

suant to this section when furnished by an authorized surety company or by a duly constituted governmental bonding fund shall be paid from the unemployment administration fund. The treasurer shall deposit and/or invest the fund under the supervision and control of the commission, subject to the provisions of this Act.

(d) Deposit. All contributions paid under this Act shall upon collection be deposited in or invested in the obligations of the "Unemployment Trust Fund" of the United States Government or its authorized agent, so long as said trust fund exists, notwithstanding any other statutory provision to the contrary. The commission shall requisition from the Unemployment Trust Fund necessary amounts from time to time.

Section 4. CONTRIBUTIONS. (a) Payment. On and after the first day of January, 1936, contributions shall accrue and become payable by each employer then subject to this act. Thereafter contributions shall accrue and become payable by any new employer on and after the date on which he becomes newly subject to this act. The contributions required hereunder shall be paid by each employer in such manner and at such times as the commission may prescribe.

(b) Rates of Contributions. Every employer shall pay contributions equal to the following percentages of the total wages payable (regardless of the time of payment) with respect to employment by him during such month:

(1) With respect to employment during the calendar year 1936 the rate shall be ninety-one-hundredths (.90) of one per centum;

(2) With respect to employment during the calendar year 1937 the rate shall be one and eighty one-hundredths (1.80) of per centum;

(3) With respect to employment during the calendar year 1938 and thereafter the rate shall be two and seventy one-hundredths (2.70) of per centum.

(c) Future Rates, Based on Benefit Experience. Based on the actual contribution and benefit experience of employers under this act, the commission shall (in the year 1941 and in each calendar year thereafter) classify employers in accordance with said experience; and shall determine for each employer the rate of contribution which shall apply to him throughout the calendar year, pursuant to said experience and classification. The minimum contributions thus payable to the fund shall in no case amount to less than one and one-half (1½%) per centum or more than four (4%) per centum on the employer's payroll, and the average contribution rate of all employers shall be approximately three (3%) per centum (on payroll) for any calendar year. An employer's contribution rate shall in no case be reduced until there has been at least three calendar years throughout which his employees received or could have received benefits when and if unemployed and eligible. The commission shall in-

vestigate and classify industries, employers, and/or occupations with respect to the degree of unemployment hazard in each, taking due account of any relevant and measurable factors, and shall have power to apply any form of classification or rating system which in its judgment is best calculated to rate individually the unemployment risk most equitably for each employer or group of employers and to encourage the stabilization of employment. The general basis of classification proposed to be used for any calendar year shall be subject to discussion, adoption and publication in the manner prescribed in this act for all general commission rules.

(d) "Contributions by Employees". Each employee shall contribute to the fund one per centum of his wages earned after May 1, 1936 and after the date as of which the conditions determining whether or not his employer is or will be subject to the Act have been fulfilled. Each employer shall be responsible for withholding such contributions from the wages of his employees, shall show such deduction on his payroll and records, and shall transmit all such contributions to the fund pursuant to general Commission rules.

As Amended by ACT No. 194 April 21, 1936

Section 5. BENEFITS (1)[1] Payment of Benefits. After contributions have been due under this act for two years, benefits shall become payable from

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[1]AMENDED BY ACT OF MARCH 1, 1937 TO READ AS FOLLOWS:

Section 5 (a). Payment of Benefits. After contributions have been due under this Act for two years, benefits shall become payable from the fund to any employee who thereafter is or becomes unem-

the fund to any employee who thereafter is or becomes unemployed and eligible for benefits, based on his weeks of employment as defined in this act, and shall be paid through the employment offices at such times and in such manner as the commission may prescribe.

(b) Weekly Benefits for Total Unemployment. An employee totally unemployed and eligible in any week shall be paid benefits (computed to the nearest half-dollar) at the rate of fifty per centum of his full-time weekly wage with maximum benefits of $15.00 per week.

(c) Weekly Benefits for Partial Unemployment. An employee partially unemployed and eligible in any week shall be paid sufficient benefits so that his week's wages, (and/or any other pay for personal services, including net-earnings from self-employment and his benefits combined will be two dollars more than the weekly benefit to which he would be entitled if totally unemployed in that week.)

(d)[1] One-to-Four Ratio of Benefits to Employment. The aggregate amount of benefits an em-

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ployed and eligible for benefits, and shall be paid through the employment offices at such times and in such manner as the commission may prescribe.

[1]AMENDED BY ACT OF MARCH 1, 1937, TO READ AS FOLLOWS:

Section 5 (d). DURATION OF BENEFITS. The commission shall compute wage credits for each individual by crediting him with the wages earned by him for employment by employers during each quarter, or $390, which ever is the lesser. Benefits paid to any eligible individual shall be charged, in the same chronological order as such wages were earned, against one-sixth of his wage credits which are

ployee may at any time receive shall be limited by the number of his past weeks of employment against which benefits have not yet been charged hereunder. Each employee's benefits shall be thus charged against his most recent weeks of employment available for this purpose. Each employee shall receive benefits in the ratio of one-quarter week of total unemployment benefits (or an equivalent amount as determined by general commission rules, of benefits for partial unemployment or for partial and total unemployment combined) to each week of employment of such employee occurring within the 104 weeks preceding the close of the employees most recent week of employment.

As Amended by ACT No. 194 April 21, 1936

(e)[1] Maximum Weeks of Benefit in Any Year. Benefits shall be paid each employee for the weeks

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based upon wages earned, during his base period and which have not been previously charged hereunder. The maximum total amount of benefits payable to any eligible individual during any benefit year shall not exceed which ever is the lesser of (1), twenty (20) times his weekly benefit amount, and (2), one-sixth of such uncharged wage credits with respect to his base period.

[1]SECTION 5 (e) PART-TIME WORKERS. (1) As used in this subsection the term "part-time worker" means an individual whose normal work is in an occupation in which his services are not required for the customary schedule full-time hours prevailing in the establishment in which he is employed or who, owing to personal circumstances, does not customarily work the customary scheduled full-time hours prevailing in the establishment in which he is employed.

(2) The commission shall prescribe fair and reasonable general rules applicable to part-time workers for determining their full-time weekly wage and the total wages for employment by employers required to qualify such workers for benefits. Such rules shall with respect to such workers, supersede any inconsistent provisions of this Act, but, so far as practicable shall secure results reasonably similar to those provided in the analagous provisions of this Act."

during which he is totally or partially unemployed and eligible for benefits, based on his past weeks of employment; but not more than sixteen (16) weeks of total unemployment benefits (or an equivalent total amount as determined by commission rules, of benefits for partial unemployment or for partial and total unemployment combined) shall be paid any employee for his weeks of unemployment occurring within any fifty-two (52) consecutive weeks.

(f)[1] Additional Benefits (One-to-Twenty Ratio) An eligible employee who has received the maximum benefits permitted under subsection (e) shall receive additional benefits in the ratio of one week of total unemployment benefit (or its equivalent) to each unit of twenty aggregate weeks of employment occurring within the 260 weeks preceding the close of the employee's most recent week of employment, and against which benefits have not already been charged under this act. Such additional benefits shall be charged against the employee's earliest weeks of employment available for this purpose.

Section 6. BENEFITS ELIGIBILITY CONDITIONS (a)[1] Employment Requirement. An employee shall be deemed eligible for benefits for any

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[1]Omitted by Act of March 1, 1937.

[1]AMENDED BY ACT OF MARCH 1, 1937, to read as follows:

SECTION 6 a). BENEFIT ELIGIBILITY CONDITIONS, (a) Employment Requirement. An employee shall be deemed eligible for benefits for a given week of his unemployment only if he has within the first three out of the last four completed calendar quarters immediately preceding the first day of his benefit year earned wages for employment by employers equal to not less than sixteen times his weekly benefit amount.

given week of his unemployment only if he has either

(1) accumulated 40 weeks of employment subject hereto within the 104 weeks immediately preceding the date of his application for benefits, or

(2) accumulated 26 weeks of employment subject hereto within the 52 weeks immediately preceding the date of his application for benefits.

(b) Availability and Registration for Work. An employee shall not be eligible for benefits in any week of his partial or total unemployment unless in such week he is physically able to work and available for work, whenever duly called for work through the employment office. To prove such availability for work, every employee partially or totally unemployed shall register for work and shall file claim for benefits at the employment office, within such time limits and with such frequency and in such manner (in person or in writing) as the commission may by general rule prescribe. No employee shall be eligible for benefits for any week in which he fails without good cause to comply with such registration and filing requirements. A copy of the commission's rules covering such requirements shall be furnished by it to each employer who shall inform his employees of the terms thereof when they become unemployed.

(c) Waiting Period. Benefits shall be payable to an employee only for his weeks of unemployment occurring subsequent to a "waiting period" whose

duration shall in each case be determined as follows: An aggregate of three (3) waiting-period-units shall be required of the employee within the fifty-two (52) weeks preceding the start of any given week of unemployment. There shall not be counted toward an employee's required waiting period or periods any week of total or partial unemployment in which he is ineligible for benefits under subsection (b), (d), (e), (f), (g) of this section.

(d) During Trade Disputes. An employee shall not be eligible for benefits for any week in which his total or partial unemployment is directly due to a labor dispute still in active progress in the establishment in which he is or was last employed.

(e) Voluntary Leaving. An employee who has left his employment voluntarily without good cause connected with such employment shall be ineligible for benefits for the week in which such leaving occurred and for the three next following weeks.

(f) Discharge for Misconduct. An employee who has been discharged for proved misconduct connected with his employment shall thereby become ineligible for benefits for the week in which such discharge occurred and for not less than the three nor more than six next following weeks, as determined by the commission in each individual case.

(g) Refusal of Suitable Employment. If an otherwise eligible employee fails, without good cause either to apply for suitable employment when noti-

fied by the employment office, or to accept suitable employment when offered him, he shall thereby become ineligible for benefits for the week in which such failure occurred and for the three next following weeks. "Suitable employment" shall mean any employment for which the employee in question is reasonably fitted, which is located within a reasonable distance of his residence or last employment, and which is not detrimental to his health, safety or morals. No employment shall be deemed suitable, and benefits shall not be denied under this act to any otherwise eligible employee for refusing to accept new work, under any of the following conditions:

(1) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(2) if the wages[1], hours, and other conditions of the work offered are substantially less favorable to the employee than those prevailing for similar work in the locality;

(3) if acceptance of such employment would either require the employee to join a company union or would interfere with his joining or retaining membership in any bona fide labor organization.

Section 7. SETTLEMENT OF BENEFIT CLAIMS. (a) Filing. Benefit claims shall be filed at the employment office, pursuant to general commission rules.

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[1] "Remuneration" substituted for "wages" by Act of March 1, 1937.

(b) Initial Determination. A deputy designated by the commission shall promptly determine whether or not the claim is valid, and the amount of benefits apparently payable thereunder, and shall duly notify the employee and his most recent employer of such decision. Benefits shall be paid or denied accordingly, unless either party requests a hearing within five calendar days after such notification was delivered to him or was mailed to his last known address.

(c) Appeals. Unless such request for a hearing is withdrawn the claims thus disputed shall be promptly decided, after affording both parties reasonable opportunity to be heard, by such appeal tribunal as the commission may designate or establish for this purpose. The parties shall be duly notified of such tribunal's decision, which shall be deemed a final decision by the commission except in cases where the commission acts on its own motion or, pursuant to general rules, permits the parties to initiate further appeal or review.

(d) Appeal Tribunal. To hear and decide disputed claims, the commission may establish one or more appeal tribunals consisting in each case of one full-time salaried examiner (or commissioner) who shall serve as chairman, and of two other members, namely an employer or representative of employers and an employee or representative of employees, who shall each be paid a fee of not more than ten dollars per day of active service on such tribunal (plus necessary expenses) and shall serve until re-

placed by the commission except that no person shall hear any case in which he is a directly interested party. The chairman of such appeal tribunal may act for it at any session in the absence of one or both other members, provided they have had due notice of such session.

(e) Procedure. The manner in which claims shall be presented, the reports thereon required from the employee and from employers, and the conduct of hearings and appeals shall be governed by general commission rules (whether or not they conform to common law or statutory rules of evidence and other technical rules of procedure) for determining the rights of the parties. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing shall be taken down by a stenographer, but need not be transcribed unless the disputed claim is further appealed.

(f) Commission Review. The commission shall have the power to remove or transfer the proceedings on any claim pending before a deputy, appeal tribunal, or commissioner; and may on its own motion (within ten days after the date of any decision by a deputy, appeal tribunal, commissioner, or by the commission as a body) affirm, reverse, change, or set aside any such decision, on the basis of the evidence previously submitted in such case, or direct the taking of additional testimony.

(g) Appeal to Courts. Except as thus provided, any decision (unless appealed pursuant to general

commission rules) shall, ten days after the date of such decision, become the final decision of the commission, and all findings of fact made therein shall (in the absence of fraud) be conclusive; and such decision shall then be subject to judicial review solely on questions of law. Such judicial review shall be barred unless the plaintiff party has used and exhausted the remedies provided hereunder and has commenced judicial action (with notice to the commission) within ten days after a decision hereunder has become the final decision of the commission in the disputed case.

(h) Oaths and Witnesses. In the discharge of their duties under this section any deputy, and member of an appeal tribunal, and any examiner, commissioner, or duly authorized representative of the commission shall have power to administer oaths to persons appearing before them, take depositions, certify to official acts, and by subpoenas (requested by the commissioner of and served by the officers of the circuit court having jurisdiction of the parties) to compel attendance of witnesses and the production of books, papers, documents, and records necessary or convenient to be used by them in connection with any disputed claim. Witness fees and other expenses involved in proceedings under this section shall be paid to the extent necessary, at rates specified by general commission rules, from the unemployment administration fund.

Section 8. Court Review. (a) Within ten (10) days after the decision of the Commission has become final, either party may appeal to the Circuit

Court, sitting in the county of the residence of the employee, from such decision. Upon the filing of any such appeal notice thereof shall be served upon the Commission by the appellant. Such appeals shall be heard by the Court at the earliest possible date and shall be given precedence over all other civil cases. It shall not be necessary on any such appeal to enter exceptions to the rulings of the Commission and no bond shall be required for entering such appeal. Said appeal shall be effected by the filing of a brief statement of his grievances by the appellant with the Clerk of said court.

(b) An appeal may be taken from a decision of such Court to the Court of Appeals of Alabama or the Supreme Court of Alabama as now provided by law.

Section 9. UNEMPLOYMENT COMPENSATION COMMISSION. (a) Organization. There is hereby created a commission of three members, to be known as the Unemployment Compensation Commission of Alabama. The members of the commission shall be appointed by the Governor within ninety days after the passage of this Act. The Governor shall designate one member as Chairman. The commissioners thus appointed shall serve as designated by the Governor at the time of appointment, one for a term of two years, one for a term of four years, and one for a term of six years. At the expiration of such initial terms appointments shall be made for a term of six years in each case. Any appointment to a vacancy shall be for the unexpired term

in question. No commissioner shall, during his term of office, serve as an officer or committee member of any political party organization.

(b) Salaries. The Chairman of the commission shall be paid a fixed monthly salary, at the rate of $3,600.00 per year of service, from the unemployment administration fund. The compensation of the associate members shall be ten ($10.00) dollars per day for days actually spent upon the business of the commission, and necessary traveling expenses.

(c) Meetings. The commission shall meet one day each calendar month. It shall meet such additional days each month as the business of the commission may require, when authorized by the Governor.

(d) Quorum. Any two commissioners shall constitute a quorum to transact business. No vacancy shall impair the right of the remaining commissioners to exercise all of the powers of the commission so long as a majority remain. The commission shall determine its own organization and methods of procedure.

Section 10. ADMINISTRATION. (a) Duties and powers of commission.. It shall be the duty of the commission to administer this act; and it shall have power and authority to adopt and enforce all reasonable rules and orders necessary or suitable to that end, and to employ any person, make any expenditures, require any reports, and take any other action (within its means and consistent with the provisions of this act) necessary or

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suitable to that end. Annually, by the first day of February, the commission shall submit to the governor a summary report covering the administration and operation of this act during the preceding calendar year, and making such recommendations as the commission deems proper. Whenever the commission believes that a change in contribution and/or benefit rates will become necessary to protect the solvency of the fund, it shall at once inform the Governor and the legislature thereof, and make recommendations accordingly.

(b) General Commission Rules. General rules, interpreting or applying this act and affecting all (or classes of) employers, employees, or other persons or agencies, shall be adopted by the commission only after discussion with a representative statewide advisory council (constituted as hereinafter described) or after public hearing (before the commission) of which notice has been given through the press. Such general commission rules shall, upon adoption by a majority of the commission, be duly recorded in its minutes and be filed with the Secretary of State, and shall thereupon take legal effect. Such rules may be amended, in the same manner as is above provided for their adoption.

(c) Publication. The Commission shall cause to be printed in proper form for distribution to the public the text of this act, the commission's general rules, its annual report to the Governor, and any other material the commission deems relevant and suitable, and shall furnish the same to any person upon application therefor; and such printing and

availability upon application shall be deemed a sufficient publication of the same.

(d) Personnel. The commission subject to the written approval of the Governor is authorized, within its means to appoint and fix the compensation of such officers, accountants, attorneys, experts and other persons as are necessary in the execution of its functions. All positions in the administration of this act shall be filled by persons selected and appointed on a nonpartisan merit basis, under rules and regulations of the commission. The commission shall not employ or pay any person who is serving as an officer or committee member of any political party organization. The commission shall fix the duties and powers of all persons thus employed, and may authorize any such person to do any act or acts which could lawfully be done by a commissioner. The Commission may in its discretion bond any person handling moneys or signing checks hereunder.

(e) Advisory Councils. The Governor shall appoint a State-wide advisory council of not less than nine members and may appoint local advisory councils, composed in each case of equal numbers of employer representatives and employee representatives (namely of persons who may fairly be regarded as thus representative because of their vocation, employment or affiliations), and of members representing the public generally. Such councils shall aid the commission in formulating policies and discussing problems related to the administration of this act and in assuring impartiality, neutrality and freedom from political influence in the solution of

such problems. Such advisory councils shall serve without compensation, but shall be reimbursed for any necessary traveling expenses, when aproved by the Governor. Said State-wide advisory council shall assemble immediately upon their appointment by the Governor and institute a careful study and analysis of the National Security Act and of its relation to this act and to the other acts and laws of the State of Alabama designed to coordinate this State and its institutions with the plans and purposes of the Federal Government as expressed in its said Security Act. Said council shall at its earliest possible convenience prepare recommendations as to changes, amendments or modifications of such acts and laws of the State of Alabama, and particularly this act, and said recommendations shall be submitted to the Governor and to the Legislature at its next session and at such succeeding sessions as said council may deem proper.

(f) Employment stabilization. It shall be one of the purposes of this act to promote the regularization of employment in enterprises, localities, industries and the state. The commission, with the advice and aid of its advisory council, shall take all appropriate steps within its means to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise and assist in the establishment and operation, by municipalities, counties, school districts and the State, of reserves for public works to be used in times of business de-

pression and unemployment; to promote the reemployment of unemployed workers throughout the State in every other way that may be feasible; and to these ends to employ experts and to carry on and publish the results of investigations and research studies.

(g) Records and Reports. Every employer (of any person in this State) shall keep true and accurate employment records of all persons employed by him, and of the weekly hours worked for him by each, and of the weekly wages paid by him to each such person[1]. Such records shall be open to inspection by the commission or its authorized representatives at any reasonable time and as often as may be necessary. The commission may require from any employer (of any person in this State) any reports covering persons employed by him, or employment, wages, hours, unemployment and related matters, which the commission deems necessary to the effective administration of this act. Information thus obtained shall not be published or be open to public inspection in any manner revealing the employer's identity, and any commission employee guilty of violating this provision shall be subject to the penalties provided in this act.

(h) Representation in Court. On request of the commission the attorney general shall represent the commission and the State in any court action

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Amended by Act of March 1, 1937, to read as follows:

[1]SECTION 10 (g) Every employer whether or not otherwise subject to the Act shall keep true and accurate work records containing such information as the commission may prescribe. • • •

relating to this act or to its administration and enforcement, except as special counsel may be designated by the Commission with the approval of the Governor, and except as otherwise provided in this act.

(i) State Federal Cooperation. The commission is hereby authorized and directed to cooperate in all necessary respects with the appropriate agencies and departments of the Federal Government, in the administration of this act and of free public employment offices; and to make all reports thereon requested by any directly interested Federal agency or department, and to accept any sums allotted or apportioned to the State for such administration, and to comply with all reasonable Federal regulations governing the expenditures of such sums.

As Amended by
ACT No. 156
April 21, 1936

That Section 11 be and the same is hereby repealed.

Section 12. RECIPROCAL BENEFIT ARRANGEMENT WITH OTHER STATES. The Commission is hereby authorized, subject to approval by the governor, upon such terms as in its judgment will not result in any loss to the fund, to enter into reciprocal arrangements with the proper authorities, in the case of any other unemployment compensation system established by any state law or by an Act of Congress, as to persons who have (after acquiring rights to benefits under this Act or under such other system) newly come under this Act or under such other system whereby such bene-

fits (or substantially equivalent benefits) shall be paid (or both paid and financed) in whole or in part through (or by) the fund of the unemployment compensation system newly applicable to such person. Such reciprocal arrangements shall be adopted and published by the commission in the same manner as its general rules.

Section 13. PROTECTION OF RIGHTS AND BENEFITS. (a) Waiver of Rights Void. No agreement by an employee to waive his right to benefit or any other right under this Act shall be valid. No agreement by an employee or by employees to pay all or any portion of the contributions required under this act from employers shall be valid. No employer shall make or require any deduction from wages to finance the contributions required of him, or require any waiver by an employee of any rights hereunder. Any employee claiming a violation of this section may have recourse to the method set up in this Act for deciding benefit claims; and the commission shall have power to take any steps necessary or suitable to correct and prosecute any such violation.

(b) Limitation of Fees. No employee shall be charged fees of any kind by the commission or its representatives, in any proceeding under this Act. Any employee claiming benefits in any proceeding or court action may be represented by counsel or other duly authorized agent; but no such counsel or agents shall together charge or receive for such services more than ten per centum of the maximum benefits at issue in such proceeding or court action.

(c) No Assignment or Garnishment of Benefits. Benefits which are due or may become due under this Act shall not be assignable before payment, but this provision shall not affect the survival thereof; and when awarded, adjudged, or paid shall be exempt from all claims of creditors and from levy, execution and attachment or other remedy now or hereafter provided for recovery or collection of debt, which exemption may not be waived.

Section 14. COLLECTION OF CONTRIBUTIONS. (a) Interest on Tardy Payments. If any employer fails to make promptly, by the date it becomes due hereunder any payment required to be made by him under this act, he shall be additionally liable (to the unemployment administration fund) for interest on such payment at the rate of one percentum per month from the date such payment became due until paid, pursuant to general commission rules.

(b) Bankruptcy. In the event of an employers' dissolution, bankruptcy, adjudicated insolvency, receivership, assignment for benefits of creditors, judicially confirmed extension proposal or composition, or any analogous situation, contribution payments then or thereafter due under this act shall have the greatest priority (subsequent to taxes, but at least equal to wage claims) then permitted by law; but this subsection shall not impair the lien of any judgment entered upon any award.

(c) Court Action. Upon complaint of the commission, the attorney-general shall institute and

prosecute the necessary actions or proceedings for the recovery of any contributions or other payments due hereunder; or, at his request and under his direction, the prosecuting attorney (or any county in which the employer has a place of business) shall institute and prosecute the necessary actions or proceedings for the recovery of any contributions or other payments due hereunder.

Section 15. PENALTIES: (a) Whoever wilfully makes a false statement or representation to obtain or increase any benefit or other payment under this Act, either for himself, or for any other person, shall upon conviction be punished by a fine of not less than twenty nor more than fifty dollars, or by imprisonment in the county jail not longer than thirty days, or by both such fine and imprisonment; and each such false statement or representation shall constitute a separate and distinct offense.

(b) Any employer (of any person in this state) and any officer or agent of an employer, who wilfully makes a false statement or representation to avoid becoming or remaining subject hereto or to avoid or reduce any contribution or other payment required of such employer under this act or who wilfully fails or refuses to make any such contribution or other payment or to furnish any reports duly required hereunder or to appear or testify or produce records as lawfully required hereunder, or who makes or requires any deduction from wages to pay all or any portion of the contributions required from employers, or who tries to induce any employee to

waive any right under this act, shall upon conviction be punished by a fine of not less than twenty nor more than two hundred dollars, or by imprisonment in the county jail not longer than sixty days, or by both such fine and imprisonment; and each such false statement or representation, and each day of such failure or refusal, and each such deduction from wages, and each such attempt to induce shall constitute a separate and distinct offense.

(c) Any violation, of any provision of this Act, for which a penalty is neither prescribed above nor provided by any other applicable statute, shall be punished by a fine of not less than twenty nor more than fifty dollars, or by imprisonment in the county jail not longer than thirty days, or by both such fine and imprisonment.

(d) On complaint of the commission the fines specified or provided in this section may be collected by the state in an action for debt. All fines thus collected shall be paid to the unemployment administration fund.

Section 16. UNEMPLOYMENT ADMINISTRATION FUND. (a) SPECIAL FUND. There is hereby created the "Unemployment Compensation Administration Fund" to consist of all monies received by the State or by the commission for the administration of this Act or appropriated by the State for the purposes of this act and actually paid into such fund. This special fund

As Amended by ACT No. 194 April 21, 1936

shall be handled by the State treasurer as other State moneys are handled; but it shall be expended solely for the administration of this Act and other purposes herein specified, and its balances shall not lapse at any time but shall remain continuously available to the commission for expenditure consistent herewith.

(b) FEDERAL AIDS. All Federal moneys allotted or apportioned to the State by the Federal Social Security Board (or other agency) for the administration of this act shall be paid into the unemployment administration fund. Subdivision C. Whenever requested by the Unemployment Compensation Commission to perform certain acts in connection with the Unemployment Compensation Commission, the Alabama State Employment Service shall perform such acts as are requested and in the manner prescribed by the Unemployment Compensation Commission as expeditiously and economically as may be, and shall render to the Unemployment Compensation Commission a statement of the actual expenses incurred by the Alabama State Employment Service, and the manner in which they were performed, whereupon the Unemployment Compensation Commission shall pay to the Alabama State Employment Service the amount of such expenses incurred.

Section 17. APPROPRIATIONS. All moneys in the unemployment administration fund at any time are hereby appropriated to the Unemployment Compensation Commission. As Amended by ACT No. 156 April 21, 1936

It is expressly provided that in the

event the Supreme Court of the United States shall hold Title Three or title nine of the Federal "Social Security Act" approved by the President August 14th, 1935, unconstitutional or inoperative for any reason whatsoever, then this Act shall become void-inoperative and of no effect and all payments of levies, contributions, taxes or pay-roll deductions made hereunder and then remaining unexpended shall be returned ratably to those making such payments and if such payments contain in whole or part deductions from the remuneration of employees, such employees shall in turn be repaid ratably such deductions as are returned on their account to their employers.

That if any section, clause or provision of this act should be held invalid, it shall not effect the remaining portions not so held invalid.

This act shall take effect immediately upon its passage and approval by the Governor.

Section 18[1]. SAVING CLAUSE. The Legislature reserves the right to amend or repeal all or

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[1]AMENDED BY ACT OF MARCH 1, 1937, to read as follows:

Section 18 (a). The Legislature reserves the right to amend or repeal all or any part of this Act at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this act or by acts done pursuant thereto shall exist subject to the power of the Legislature to amend or repeal this act at any time. (b) If at any time the Governor shall find (1) that the provisions of this act requiring the payment of contributions and benefits have been held invalid under the constitution of this state by the Supreme Court of this State or under the United States Constitution by the Supreme

any part of this Act at any time; and there shall be no vested private right of any kind against such amendment or repeal. It is expressly provided that in the event the Supreme Court of the United States shall hold the Federal "Social Security Act" approved by the President August 14th, 1935, unconstitutional or inoperative for any reason whatsoever, then this Act shall become void,

As Amended by ACT No. 194 April 21, 1936

Court of the United States in such manner that any person or concern required to pay contributions under this act might secure a similar decision; or (2) that the tax imposed by Title IX of the Social Security Act, as amended, or any other federal tax against which contributions under this act may be credited has been amended or repealed by Congress or has been held unconstitutional by the Supreme Court of the United States, with the result that no portion of the contributions required by this act may be credited against such federal tax; the Governor shall publicly so proclaim and upon the date of such proclamation the provisions of this Act requiring the payment of contributions and benefits shall be suspended. The Commission (and for the purposes of this section, the commission shall remain or become the agency for carrying out the provisions hereof) shall thereupon forthwith requisition from the Unemployment Trust Fund all moneys therein standing to its credit and shall direct the State Treasurer to deposit such moneys, together with any other moneys in the fund, as a special fund in any banks or public depositories in this state in which general funds of the state may be deposited. The Commission shall thereupon forthwith and within sixty days after receipt of such moneys refund, without interest and in accordance with regulations prescribed by it, to each person or concern by whom contributions have been paid, his prorata share of the total contributions paid under this Act; after the expiration of said sixty days, the duties herein imposed upon said commission shall cease and determine and all powers herein conferred and duties herein imposed not then executed shall be conferred upon and executed by the Treasurer. Any interest or earnings of the fund shall be available to the commission to pay for the costs of making such refunds. When the commission shall have executed the duties herein prescribed and performed such other acts as are incidental to the termination of its duties under this act, the Governor shall by proclamation declare that the provisions of this act shall cease to be operative.

inoperative and of no effect and all payments of levies, contributions, taxes or payroll deductions made hereunder and then remaining unexpended shall be returned ratably to those making such payments and if such payments contain in whole or part deductions from the remuneration of employees, such employees shall in turn be repaid ratably such deductions as are returned on their account to their employers.

Section 19. SEPARABILITY OF PROVISIONS. If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 20. EFFECTIVE DATE. This act shall take effect upon its enactment.

Approved September 14, 1935.

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1936-37.

3 Div. 198.

Beeland Wholesale Company

v.

Jacob L. Kaufman, Chairman,

Alabama Unemployment Compensation Comm., et al.

Appeal from Montgomery Circuit Court, in Equity.

FOSTER, Justice.

The purpose of this litigation is to test the validity of an Act of the Legislature, as amended, known as the "Unemployment Compensation Law."—Acts of 1935, page 950; Acts of 1936, pages 176, 225, 228.

Briefly stated for the immediate purpose of stating the issues, it may be said to require certain employers and employees to make regular contributions to a fund to be paid to the employees of that class, when unemployed, according to the requirements and restrictions fully expressed. The employer means any person or corporation who has employed at least eight persons in each of twenty or more calendar weeks in 1935, or any subsequent calendar year (omitting further detail), excepting certain specified classes of employment.

Employee means any person employed by an employer, who is subject to this Act and in employment subject to it. The contributions by the employers are based upon a definite percentage of the monthly payroll of each such employer, respectively, until 1941, and each year thereafter, when the commission shall classify employers in accordance with their benefit experience, and shall determine for each employer the rate of contribution which shall apply to him through that year based on that classification. Such classification shall be with respect to the degree of unemployment hazard, taking into account all relevant and reasonable factors. The rate of contribution by employees is fixed at a definite per cent. of his wages. All contributions by both employers and employees are paid into a trust fund handled by a treasurer elected by the State Commission set up to administer the Act. We need not detail the particular provisions regulating the payment of benefits, when payable and the conditions on which payments are to be made. They are matters which do not affect the legal questions here presented.

Appellants insist that the contributions are tax assessments, and that as such they are made to extend to an arbitrary class, without due regard to others who should bear the burden, and that they are not assessed according to the extent to which each such employer has contributed to unemployment, on a merit rating basis, but upon a straight line proportion applicable to all employers, according to his monthly payroll. They argue that there is a vast diversity of employment, and dissimilar in char-

acter that it is arbitrary for unemployees of all such employments to be on the same scale of benefits from a fund to which employers have largely contributed, but whose business is not even remotely connected with that in which the unemployment may have occurred. They also contend that the tax is an income tax, as applied to employees, not within the Income Tax Amendment, and is therefore a property tax, and violates sections 211, 214 and 217 of the Alabama Constitution; and further that the Alabama Act is not operative unless the Federal Social Security Act is constitutional, and that it is unconstitutional, and should be so declared because it violates Amendment No. 5, due process, and the tax was not laid for a purpose authorized by Article 1, section 8, Federal Constitution, not being for the general welfare of the United States, and exerts an illegal coercion on the states to enact an unemployment compensation law.

Appellants also contend that the Alabama Act violates the due process clause of section 6, Alabama Constitution, and the Fourteenth Amendment to the Federal Constitution, in that the tax or contribution is not laid for any governmental function of the State or its subdivisions or any other public purpose, but its effect is to tax one class of citizens for the personal and private benefit of another class, and that it therefore also violates section 23 of the Alabama Constitution. The right is questioned because the contributions are nothing but taxes, and must be rested on the taxing power of the State.

We know of no authority of a state to take the property of a citizen except by way of taxes or eminent domain. It is said in Moog v. Randolph, 77 Ala. 597, 602, that "there is a clear line of demarcation between the taxing power of a government, and the right of eminent domain, which is not properly distinguished in many of the adjudged cases, thus sometimes tending to confusion. Taxation is the just proportion of the citizen's share or contribution to the support of the government, while eminent domain involves the idea of a forced contribution, beyond or in excess of his share." It is also said that the taxing power is not limited by the constitutional restrictions on the right of eminent domain.

The statement is frequently made that ordinary money is not subject to the power of eminent domain, since compensation of an equal amount must be paid for it, and is therefore in the nature of a forced loan.—20 Corpus Juris 588. Eminent domain is in the nature of a forced *sale of property* rights for an amount of money equal to its value, although originally, and without constitutional provision, the State could take property for public use without compensation, though in excess of the just share of the citizen to the expense of government.—Steele v. County Commissioners, 83 Ala. 304.

The contributions here in question are not justified as an exercise of the right of eminent domain, but are based upon a claim that they represent the just proportion of certain citizens' share to the sup-

port of the government. They are taxes, and can be justified only as such.

The power to tax is an inherent attribute of sovereignty. It is not a power delegated to the states. It is vested by the Constitution in the Legislature subject only to the restrictions in the State and Federal Constitutions. Except in respect to due process and equal protection of the laws, it has been pointed out that the constitutional restrictions on the Legislature of Alabama in this respect extend only to property taxes,—Phoenix Carpet Co. v. State, 118 Ala. 143, 22 So.; 627; Phoenix Assr. Co. v. Fire Department of Montgomery, 117 Ala. 631, 23 So. 843; Phelps v. Union Bank & Trust Co., 225 Ala. 238, 142 So. 552.—except as now limited by the Income Tax Amendment.

Subject to such limitations the Legislature's acts in imposing taxes are reviewable only by an exercise of the electorate and invoke no power of the judiciary.—Stein v. Mobile, 24 Ala. 591, 614; Capital City Water Co. v. Board of Revenue of Montgomery, 117 Ala. 303, 23 So. 970.

Taxes may be laid by the State on *persons, property, rights* and privileges.—State v. Weil, 232 Ala. 578, 168 So. 679. The purpose of giving a designation to a tax, as being a certain one of those just enumerated, is to determine if there is a limitation or restriction in the Constitution on such a designated tax. That is whether it violates the restrictions on property taxes, or due process and equal protection, if the tax is personal or an excise. The

police power does not confer on the State a right to tax which it did not already possess. The police power of the State furnishes occasion for expenditures. It is not to be measured by the power of cities and counties to license for police purposes. They have no right to license or lay any tax except as it is granted to them.—Mills v. Court of County Commissioners, 204 Ala. 40, 85 So. 564; Phoenix Carpet Co. v. State, supra.

When their authority is to license for police purposes only, they cannot license for the general revenue. Police power then measures the power to tax in that sphere.—Standard Chem. & Oil Co. v. Troy, 201 Ala. 89, 77 So. 383; VanHook v. City of Selma, 70 Ala. 363. But the police power of the State in no respect measures its power to tax. However, we will show that if a tax is earmarked for a certain police purpose, if that purpose is not in the police power, the tax falls with it. So much is said as applicable to both taxes: employers' and employee's.

We will first refer more directly to the tax on employers. It has no aspects of a property tax. It is not measured by property ownership, or income, but on a feature of its outgo, and is unquestionably an excise. Therefore the restrictions on property taxes have no application.—Section 211, 214 and 217, Constitution. But it must square with due process and equality.

It is contended that it does not meet that requirement because manifestly all employers have not and will not contribute to unemployment with equal re-

sponsibility; and their businesses are so dissimilar and far removed from each other that it is an inequality to require all to contribute ratably to one pool for the unemployment in business in which many employers will have no connection.

This presents a federal question under the Fourteenth Amendment, as well as a State question under section 6, Alabama Constitution. But no decision of the United States Supreme Court is directly in point on it, and until that court passes on it, the State courts must do so on their own judgment when it is necessary to determine the rights of its citizens. But we will endeavor to apply the principles which that court has established to guide us in arriving at a conclusion.

The tax we are dealing with now, the State tax, is laid for a definite purpose and the amount collected is to be put in trust to be used for no other purpose. The tax levied cannot be separated from the purpose to be accomplished, and the resulting benefits to the employer class generally.

The Railroad Retirement Act (Railroad Retirement Board v. Alton, 295 U. S. 330, 79 L. ed. 1468) made provisions for railroad employees existing then, or thereafter, or who had been so within the past year, and conferred benefits upon all such employees who reached the age of sixty-five, if he retires, but may by agreement continue in service until he reaches seventy, when he must retire. The purpose of such provision was not to stabilize industry or the business of railroads, and it was not

made to appear that the pensioners thus provided for occupied such a relation to the economic fabric as that to give them purchasing power would have a stabilizing influence in such a way as to affect the business generally of railroads. But it was said to be akin in princple to the workmen's compensation laws, which properly put upon each employer the burden of caring for the hazard of its own business, and that to pension its employees upon reaching sixty-five years was a burden peculiar to each employer separately. There was said to be a difference in responsibility for the drain or burden on the fund arising from different industries which should be equated if the recipients of that fund are to be paid out of a pool to which all employers contributed.

The Mountain Timber case (Mountain Timber Co. v. Washington, 243 U. S. 219) was a workmen's compensation case in which employers contributed to a pool. It was sustained and was different from the Railroad Retirement case, supra, in that in the former the contributions were on a merit rating basis, but not so in the railroad case.

But we do not think a merit rating is essential to the Act in question here, because all employers will benefit on a horizontal basis from the effects sought to be accomplished, and it is conceded that there is at present no available data on which to fix a merit rating basis. The Act is a part of a nation wide program to prevent widespread unemployment for an appreciable period. It is coordinated with similar acts in other states. Extensive unemployment depreciates consumer purchasing power, and tends

to demoralize a large class of citizens; and to stimulate crime, disorder and social degradation. That is the rationale of the program, as we understand it. Whether it will work is not a judicial inquiry, if it is a legitimate end, and the means are reasonably related to that end. We do not think that it is arbitrary or capricious. It is impossible to forecast the extent to which each employer will directly or indirectly contribute to unemployment, so as to put them on a merit rating basis except by reference to past experience for which there is no available data at the present. And then the situation would be speculative. The upbuilding and prosperity of one business often causes the decline of another, with no fault in management; but due to new processes, discoveries, and inventions. Who is responsible for the unemployment thus occasioned? This Act looks to an adjustment of such questions in 1941, and thereafter. Whether it will then be workable on a merit basis or whether due process is accorded in such adjustments as may then be undertaken will then be time to decide. No such question is here involved.

The theory of taxing employers in a small way for an ulterior public purpose, though it may have an immediate private use is illustrated in the bank deposit guaranty principle approved in Noble State Bank v. Haskell, 219 U. S. 104; Abie State Bank v. Bryan, 282 U. S. 765, 75 L. ed. 690. The bankers who contribute to the pool will most of them never be responsible for the evil sought to be corrected. Each bank should of course pay its own depositors, and will do so or fail in business. The other banks

did not contribute to that failure. But the widespread knowledge entertained by the public that depositors in banks will get their money regardless of the solvency of any particular bank will tend to prevent a run by depositors on banks generally, and stabilize the banking business. But all banks contribute to the pool in equal proportion on the basis of daily deposits.

And so when employers who make ratable contribution to the pool for unemployed, and thereby uphold an economic and moral status necessary for their successful operation. When a large extent of territory or of people are thus benefited, the whole State in a public way is affected. This is illustrated in the irrigation project in California held to be of such widespread benefit as to be for a public purpose and therefore to afford due process.—Fallbrook Irrigation District v. Bradley, 164 U. S. 112, 41 L. ed. 369. The public benefit there provided distinguishes it from our drainage district cases,—Collins v. Hollis, 212 Ala. 249, 102 So. 379; Robertson v. Collins, 218 Ala. 54, 117 So. 415,—and from the Railroad Retirement case, supra. Our judgment is that the tax on employers does not deprive them of due process or of equal protection.

We will here also consider the employees' contention made in their case, so that one opinion will answer for all cases. Section 4(d) of the amendment of April 21, 1936, page 227, provides that "Each employee shall contribute to the fund one per cent. of his wages earned after May 1, 1936." The employer is required to withhold this amount from

such wages and transmit it into the fund. The employee makes no report and takes no part in any of the proceedings leading to the contribution. It is upon his gross wages with no deductions or exemptions. No assessments are made.

If this is a tax on property it violates sections 211, 214 and 217, Constitution, and is not within the terms of the income tax amendment. The claim that it is an income tax and therefore a property tax is based on Eliasberg Bros. v. Grimes, 204 Ala. 492, 86 So. 56. We have many cases which hold that a tax is not a property tax always, though measured by certain property values.—Lott v. Ross, 38 Ala. 156; Goldsmith v. Huntsville, 120 Ala. 182, 24 So. 509; Nachman, et al. v. State, MS; Anderson v. Birmingham, 205 Ala. 604, 88 So. 900; Phelps v. Union Banks & Trust Co., supra. Whether so or not is often said to depend upon the legislative intent manifested by its set up, and the machinery provided for its assesment and collection.

If it is classified with other property as a subject of property tax, it will be so held.—Ex parte Morrill-Doyle Realty and Ins. Co., 213 Ala. 697, 106 So. 63. Property taxes must be assessed in some form. —Perry County vs. M. & M. R. R. Co., 58 Ala. 546. Or something equal to it must be provided. The State may tax its citizens personally, provided it violates no restriction. The federal government cannot do this except in proportion to the census.—Article 1, section 9 (4).

Many cases have held, as we pointed out in State v. Weil, 232 Ala. 578, 168 So. 679, that an income tax is in the nature of an excise, though there is no particular privilege protected other than that of citizenship (see New York v. Mark Graves, United States Supreme Court, March 1, 1937 (MS) appeal from New York); although in Alabama a different theory was declared in the Eliasberg case, supra. Citizens as such, for their personal protection, may be taxed, if there is due process and equal protection, and no prohibition in the Constitution. Judge Cooley calls it a specific tax, and defines it as "a specific sum by the head or number or some standard of weight or measurement, and which requires no assessment beyond a listing and classification of the objects to be taxed."—1 Cooley on Taxation (3rd ed.) page 412.

The tax here in question is an exercise of the inherent right to levy a specific tax not prohibited by the Constitution, if the classification is not violative of due process and equal protection. It is the same right which allowed the State to exact a poll tax before the Constitution adopted any features connected with it.—61 Corpus Juris 1534-1535.

Another principle is here applicable referred to in Noble State Bank v. Haskell, supra, as follows: "It would seem that there may be other cases beside the every day one of taxation, in which the share of each party in the benefits of a scheme of mutual protection is sufficient compensation for the correlative burden that it is compelled to assume." Also when a fee is charged to protect and facilitate traf-

fic in a harbor which is or may be beneficial to all who enter the harbor.—Clyde-Mallory Lines v. Alabama State Docks, 296 U. S. 261; id. 229 Ala. 624, 159 So. 53. Also the Head Money case—Edye v. Robertson,—112 U. S. 580, 28 L. ed. 798.

The contribution here in question is exacted of a certain class of employers and their employees for the benefit of unemployed in that class. In a broad sense they are both engaged in a joint enterprise whose success is beneficial to them both. The exaction of the tax on them both in the same Act is an excise tax on the coordinated business of employment looking to the end of helping them both and the people generally, and does not deprive either of due process or equal protection, and is measured by a standard which has reasonable relation to the end sought.

But it is said the scheme violates section 23 of the Alabama Constitution, as well as the due process and equal protection clauses because it is in essence the levying of a tax for the benefit of private persons, and is not a valid exercise of the State's police power.

We accept the doctrine, as we have said, that if a State undertakes a scheme which it has no right to maintain, and the enactment of it carries a plan for raising revenue to accomplish its purposes, the feature adapted to raising the revenue will not stand if the scheme for which it is solely to be used is not within the State's constitutional right,—United States v. Butler, 297 U. S. 1, 80 L. ed. 477—

"The Triple A" case. So that if the use of the fund as enacted, is prohibited by section 23, it cannot be within the police power.

It seems never to have been supposed, without those provisions, that the State could donate funds to an individual, not in the discharge of a public duty. This was pointed out by Judge Brickell in Phoenix Assr. Co. v. Fire Department of Montgomery, supra, and has been given expression in many later cases, as well as earlier ones.—Garland v. Board of Revenue, 87 Ala. 227, 6 So. 402; Southern Rwy. Co. v. Hartsborn, 162 Ala. 491, 50 So. 139; State v. Clements, 220 Ala. 515, 126 So. 162; Griffin v. Jeffers, 221 Ala. 649, 130 So. 190; Stone v. Mobile Broadcasting Co., 223 Ala. 426, 136 So. 727; also by the United States Supreme Court in Cole v. LaGrange, 113 U. S. 1, 28 L. ed. 896. And in the case of Alabama Bridge Corporation v. Smith, 217 Ala. 311, 116 So. 695, it was held that the inhibitions of sections 93 and 94 did not apply to a public corporation.

In Stein v. Mobile, 24 Ala. 591, as well as in many other authorities, it was held that taxation is only for the support and maintenance of the government, but that this means to include in its support all those means and appliances ordinarily adopted, or which may be calculated to develop the resources of the State, and add to the aggregate wealth and prosperity of the citizens, improving the social moral and physical conditions of the people by wholesome police regulations, and by a judicious system of public instruction as well as the perpetuity of the

government itself. It was held to include the right to authorize the city of Mobile to tax the owners of real estate to aid in the construction of railroads coming into the city. This was approved in Gibbons v. M. & G. N. R. R. Co., 36 Ala. 410, 437, and is recognized in Cole v. LaGrange, supra.

It is said in Garland v. Board of Revenue of Montgomery, 87 Ala. 223, that the prohibition of section 94, Constitution, was ordained to prevent subscriptions to such private corporations, but in the Alabama Bridge Corporation case, supra, neither this nor any other feature of the Constitution was held to prohibit appropriations or credit to corporations created to foster public enterprises.

While section 23, Constitution, provides that the right of eminent domain shall not be so construed as to allow taxation or forced subscription for the benefit of railroads or any other kind of corporation other than municipal or for the benefit of any individual or association, it together with section 93 was prohibiting for the State what was prohibited for cities and counties in section 94.

We think that the meaning of the quoted provision of section 23, supra, is that the State cannot levy taxes or appropriate revenues to the purposes there named, and cannot so interpret the right of eminent domain which is limited by that section in order to justify any such power.—Schultes v. Eberly, 82 Ala. 242 (pages 245-6). But when it prohibits the appropriation of revenue to private individuals, it does not mean that it may not be done

as a means or incident to a public purpose sought to be accomplished or to satisfy a public duty to that individual. It is said in Noble State Bank v. Haskell, supra, "It is established by a series of cases that an ulterior public advantage may justify a comparatively insignificant taking of private property for what in its immediate purposes is a private use."

We do not at all minimize the meaning of section 23 by holding in line with our cases, and other authorities, that it could not have meant that a vast economic scheme of stabilization cannot be maintained by the State, though it is necessary that to accomplish that purpose for the benefit of all, some individuals may receive more immediate benefits than others, when all are intended to be benefited. We do not think that the last clause of section 23 meant to curtail the State's police power, except to prohibit the State to contribute revenue or other forced contributions or to lend its credit to a private corporation or other private enterprise, since it could never do this to an individual except for a public purpose or to discharge a public duty.— United States v. Gay, 163 U. S. 41 L. ed. 215; Board, etc. v. Puckett, 227 Ala. 324; 149 So. 850.

In dealing with the state's police power, which every state reserves, the United States Supreme Court, in Home Building & Loan Association v. Blaisdell, 290 U. S. 398, 78 L. ed. 413, 88 A. L. R. 1481 written by Chief Justice Hughes, notes that it is not limited to such public calamities as fire, flood or earthquakes, but that it "cannot be said to

be non-existent when urgent public need demanding such relief is produced by other and economic causes."

Economic welfare on a large scale extending to every form of business and affecting every person in a state is within its power to protect as well as their purely physical and moral condition.—Mutual Building & Loan Association v. Moore, 232 Ala. 488, 169 So. 1; Noble State Bank v. Haskell, supra. But such conditions do, as everybody knows, affect the physical and moral welfare of the people. Starvation, or the tendency to it, due to economic depression, is as alarming and dangerous to the State and its people as that condition due to flood, drouth or earthquake. Under such circumstances, the State is not dependent upon section 88, Constitution, to help the poor. It is to prevent or break a widespread economic depression, and its demoralizing influences.

In view of well known recent experiences, the whole question of social security, in which employer and employee and the public at large are all concerned, is a proper subject of governmental action in the interest of the general welfare.

We think it is within the State's police power, not limited by section 23, because the purpose is public, and that there is no arbitrary or capricious or unequal classification either as applied to employers or employees. Similar state enactments have been upheld in New York, Massachusetts, and California: Chamberlain v. Andrews, 271 N. Y. 1, 2 N. E. (2d)

22; Gillum v. Johnson. Pac. (2d.) (Cal.); Howes Bros. v. Unemployment Compensation Comm. of Mass., in MS.

We cannot inquire into the question of federal coercion as affecting state legislation. We only lay down the Act by the side of the Constitution. If they square with each other, we can go no further. —United States v. Butler, supra; McCray v. United States, 195 U. S. 27; Magnano Co. v. Hamilton, 292 U. S. 40 (47); Florida v. Mellon, 273 U. S. 12, 71 L. ed. 511.

It is also insisted that the passage of the Act violated section 70, Constitution, in that it is an Act to raise revenue and originated in the Senate instead of the House as that section requires. But when an act has for its main purpose provision for the general welfare by enacting a scheme within the State's police power, it is not one to raise revenue, though it does so as an incident to such scheme.— In re. Opinions of Justices, 232 Ala. 60, 166 So. 710; Kennamer v. State, 150 Ala. 74, 43 So. 482; Perry County vs. M. & M. R. R. Co., 58 Ala. 546. It does not violate section 70.

Appellant also contends that the Act is not effective because its operation is made to depend upon the decision of the United States Supreme Court upholding the Federal Social Security Act.—Acts Special Session 1936, pages 228-9. The contention is that we cannot allow other governmental jurisdictions to legislate for us.

Whether that principle would apply to congressional legislation, since Congress can legislate in an effective way in Alabama, we need not here declare. We cannot make our legislation dependent upon that of other states.—State v. Firemen's Fund Ins. Co., 223 Ala. 134, 134 So. 858; Clark v. Mobile, 67 Ala. 217; State v. Praetorians, 226 Ala. 259, 146 So. 411. We have often held that an act complete in itself may be made to depend upon some contingency for its operation to become effective.—In re. Opinions of Justices, 232 Ala. 60, 166 So. 710. Such contingency cannot be the legislative enactments or administrative regulations of another state.

But in this instance the Federal Security Act had been enacted by Congress. The Alabama Act ties into it, and forms a part of a nationwide economic scheme provided for by the Federal Act. Unless it is tied up to such a widespread program, it probably could not have the influence on economy which is the foundation for its existence. It would be useless, perhaps, for one state to try to effect economic stability in respect to a situation which knows no state boundaries. But the Act is not dependent upon action by other states, but the validity of an existing Act of Congress. Expressly made to depend upon a decision of the United States Supreme Court upholding that Act, in reality it is merely dependent upon its constitutionality. Reference is made to the decision of the United States Supreme Court because that is the only court which has the authority effectually to declare it unconstitutional. Dependence upon its decision in that re-

spect is but dependence upon the effect of that decision. Its effect is that the Federal Act is valid or that it is invalid from the beginning. It never existed if it is declared to be unconstitutional. We see no reason why an Alabama statute may not be made to depend upon the validity of an existing act of Congress into which it is tied in a way necessary for it to have an effective field of beneficial operation for the public welfare. Such is we think the status of the Alabama Act, and it cannot be stricken down on that account.

It is necessary for us to lay down the law of this suit as we understand it, and since the Alabama Act is dependent upon the constitutionality of the Federal Act, it is necessary to express our opinion as to that insofar as it affects its unemployment features, since the United States Supreme Court has not acted on it. We do not feel disposed to enter into an extended discussion of the question, because it would serve no useful purpose, but we will mention the various contentions which have been made by counsel, and state our views on them.

The Fifth Amendment to the Federal Constitution secures due process against an act of Congress, while the Fourteenth secures it against state action. But due process in them both has the same meaning as we understand them. So that if we are correct in holding that the State Act does not deprive employers taxed of due process because of the inequality of taxation, the same principle would sustain the Federal Act against a like attack, and further discussion is not necessary as to that.

It is also contended that the Federal Act is subject to the Triple A case (United States v. Butler), supra, because the tax is levied for a purpose outside the competency of Congress. In this connection we observe that Title 3 of the Act makes an appropriation out of which the Social Security Board, created by the Act, will certify for payment to each state for the administration of its unemployment compensation law an amount to be determined by the board. This is payable out of the general federal treasury, and is set up to be independent of the tax which is later provided for. Title No. 9 provides for the tax upon employers of eight employees or more. It is to be collected by the Bureau of Internal Revenue, and put into the general treasury unrestricted. But the taxpayer may be credited to the extent of ninety per cent. of the tax by the amount of his contributions into an unemployment fund under state law.

(The State Act, section 3, provides that the State compensation fund shall be deposited in or invested in the obligations of the federal fund.) The Federal Act also creates a trust fund of all such state moneys as may be deposited under its laws. The Act provides for distribution of the trust fund received from the states upon requisition by the state commissioners.

It makes a tax levy and an appropriation, all out of the general treasury, and without earmarking the revenue raised. Congress need not specify the purpose for which revenue is raised. But if it does so, the taxpayer so affected may have such purpose

inquired into judicially, to determine if it is in the power of Congress. But when Congress makes an appropriation not tied up with a tax to meet it, a taxpayer cannot, as the United States Supreme Court has held, have the courts determine whether the appropriation is within such power.—Massachusetts v. Mellon, 262 U. S. 447, 67 L. ed. 1078.

So that in respect to the question here in hand, if the appropriation is independent of the tax and tax was not laid to meet the appropriation no question here arises as to the power of Congress to make it. And, in that event, the tax will stand against such an attack as this without regard to the appropriation, and will be valid if within the power delegated to Congress as an independent act to raise revenue. So tested, it is clearly an excise tax and will stand under section 8, Article 1, unless there is wanting due process under the Amendment No. 5. But we think the tax is also justified by that section if it be treated as unified with the appropriation, so that the taxpayer can, as he does, question the right to tax for that purpose.

* * *

It does not appropriate money to causes reserved by Amendment No. 10 to the states, as was held in the Triple A case, supra. It was clearly held in that case that Congress is not limited in its appropriation to the various powers expressly delegated to Congress in the various subclauses of section 8, but that it includes also the general welfare of the United States for which excise taxes are authorized in the first paragraph of section 8, provided that the exercise of such power does not infringe upon

the reserved rights of the states. The ultimate question, assuming that the tax and appropriation are unified, seems to depend upon whether Congress can appropriate revenue out of the National Treasury to aid the states in administering their unemployment laws.

In the Triple A case, supra, the holding was that the purpose and effect was to trespass on states' reserved powers, by contributing public revenues to individual farmers to make contracts to reduce acreage and curtail production. But it was said that the court was not called upon "to determine whether an appropriation in aid of agriculture falls within" the general welfare clause of section 8, Article 1. The opinion does not deny that the expenditure of funds for the benefit of farmers and in aid of a program of curtailment of production of agricultural products, and thus of a supposedly better ordered national economy, is within the specially granted powers. But it declared that state power is nevertheless infringed by the expenditure of the proceeds of the tax to compensate farmers for the curtailment of their cotton acreage.

If the tax and appropriation, though unified, are to furnish merely administrative aid to the states in a coordinated effort to make a better ordered national economy, extending even to participation in a worldwide movement, it is cearly a legitimate end within section 8, Article 1, for the protection of a basic interest of society, extending to the general welfare of the united States, and is therefore within the delegated power of Congress and infringes no

power reserved to the states under the Tenth Amendment.

It is also contended that the Federal Act cannot stand because its purpose and effect are to coerce state action to secure an end which Congress cannot accomplish by its own action. Assuming that the principle is included in that declared to exist in respect to coercing indirectly personal or corporate action in respect to a matter over which Congress cannot act directly, as in the cases of Bailey v. Drexel, 259 U. S. 20, 60 L. ed. 817; Linder v. United States, 268 U. S. 5, 69 L. ed. 819; United States v. Constantine, 296 U. S. 287, 80 L. ed. 233; Carter v. Carter Coal Co., 298 U. S. 238, 80 L. ed. 1160, it does not apply in respect to a matter as to which Congress can legislate, such as to lay inheritance taxes.—Florida v. Mellon, supra.

So the contention reverts to the question of whether Congress can levy the tax in Title 9, although coupled with an appropriation as in Title 3 to pay the states the expense of administering their unemployment compensation laws. We think the authorities support the power of Congress to levy an excise and make an appropriation to promote a program to better national economy so long as it does not trespass on the reserved rights of the states, and deprives no one of due process. This right, however, is not to be measured by the fact that Congress has made many appropriations for state aid and they were paid without question, since taxpayers do not seem to possess the power to make such test in court.—Massachusetts v. Mellon, supra.

But this is not simply a grant with a condition, as in that case, with no penalty other than a loss of the grant to follow from a failure to comply with the condition, in which the state may simply take the grant and comply with the condition, or leave it. For if the states fail to enact satisfactory unemployment compensation laws, there is no provision for aiding the unemployed in them, whereas their employers must pay the full amount of the tax, the same as though there were such laws. The simple expedient is to enact an unemployment compensation law by the State. There is therefore something in the nature of a penalty for not doing so. But that fact does not invalidate the Congressional Act, if the whole plan is within congressional power. And since we think it is so, it does not infringe on the principle which prohibits Congress from doing indirectly what it cannot do directly.

Affirmed.

Gardner, Thomas, Bouldin and Knight, JJ., concur.

Anderson, C. J., Concurs specially.

Brown, J., concurs in part and dissents in part.

ANDERSON, Chief Justice.

The last amendatory Act 1936, page 228, provides: "That in the event the Supreme Court of the United States shall hold the Federal 'Social Se-

curity Act,' approved by the President August 14th, 1935, unconstitutional or inoperative for any reason whatsoever, then this Act shall become void, inoperative and of no effect."

It is evident that the State does not wish to embark in the "social security" business except in cooperation with the Federal Government. It is also manifest that the life of the Alabama Act is dependent on what the United States Supreme Court may hold as to the validity of the Federal Act. Therefore, regardless of what this Court may think or hold as to the Alabama Act, its life and existence is dependent upon the result of the holding of the United States Supreme Court as to the validity of the Federal Act, as said court is made the final arbiter by the express terms of the Alabama Act, even though our Act does not offend either the State or Federal Constitution. I therefore think that a decision by us at this time is premature, speculative and unnecessary regardless of the urge of counsel, and that we should await the result of the action by the United States Supreme Court upon the Federal Act which will inevitably reach said court in a short time, if not already there, then if said Federal Act is upheld, it will be time enough to pass upon the Alabama Act by this Court. "Sufficient unto the day is the evil thereof."

It is the well established rule of this and other courts to not pass upon the constitutional validity of legislative enactments unless the determination is necessary to a decision of the case (meaning a final and fixed decision as distinguished from a con-

ditional or speculative one.)—Crumpton v. Montgomery, 177 Ala. 212, with many other cases cited. —Ala. Ency. Digest Vol. 3, section 35, pages 205-6.

My brothers, however, are of the opinion that the question should be presently decided.

Therefore, yielding to their view, I concur in the result of the holding that the Alabama Act does not violate our State Constitution. I am not convinced beyond a reasonable doubt that the Act is not within the police power of the State and, if it is within said police power, the present holding does not conflict with Robertson v. Collins, 218 Ala. 54, or Eliasberg Bros. Mercantile Co. v. Grimes, 204 Ala. 492.

My brother Foster has written an able, persuasive and painstaking opinion, and with which I do not at present disagree, but do not wish to concur in the discussion or holding as to the Federal statute for while it may be correct whatever we may say or hold as to said Act in no wise settles the controversy and a decision by us is not contemplated by the Alabama Act, which expressly provides that the life and validity of same must be determined by the United States Supreme Court in dealing with the Federal Act.

BROWN, JUSTICE. (concurring in part and in part dissenting).

I concur in the opinion of Justice Foster in so far as it holds that the Act of Congress is not ob-

noxious to the due process and equal protection clause of the Fifth Amendment to the Constitution of the United States. I further concur in the opinion holding that the Alabama Act, in so far as it levies a tax on employers, does not offend the said Fifth Amendment, nor the provisions of the State Constitution.

I am of the opinion, however, that the tax levied on the wages of employees, while an excise tax, is a levy on the gross income of such employes, and is offensive to Section 22 (Amendment 25.) to the Constitution of 1901. The Federal Act designates the levy on employees as "Income Tax on employees" (See Title VIII). And while the Alabama Act does not attempt to characterize the tax, is provides that "Each employee shall contribute to the fund one per centum of his wages. Each employer shall be responsible for withholding such contribution from his employees, shall show such deduction on his payroll records, and shall transmit such contributions to the fund pursuant to general commission rules." Gen. Acts 1935, pages 955-956-Section 4.

The tax on the wages of employees is bound to be an occupation tax or privilege tax, and its characterization as a non-property tax or "a specific tax not prohibited by the Constitution," does not differentiate it from an "income" tax as it is clearly characterized by the Act of Congress. It is not an occupation tax because it is not levied on the occupation, but is directly levied by the act of legislature on the wages—the income of the employee—and is justified on the theory, and only on that theory, that

it is for the privilege of receiving and enjoying such income under government protection. Such tax is an income tax pure and simple.—State v. Weil, 232 Ala. 578, 168 So. 679; The People of the State of New York v. Mark Graves, et al, U. S. Supreme Court Manuscript, March 1, 1937.

Section 22 (Amendment 25.), provides:

"The legislature shall have the power to levy and collect taxes *for state purposes on net incomes* from whatever source derived within this state, including the incomes derived from salaries, fees, and compensation paid from the state, county, municipality, and any agency or creature thereof, for the calendar year, 1933, and thereafter and to designate and define the income to be taxed and to fix the rates of taxes provided that the rate shall not exceed 5 per cent nor 3 per cent on corporations. Income shall not be deemed property for purposes of ad valorem taxes.

From net income an exemption of not less than fifteen hundred dollars ($1,500.00) shall be allowed to unmarried persons and an exemption of not less than three thousand dollars ($3,000.00) shall be allowed to the head of a family, provided that only one exemption shall be allowed to husband and wife where they are living together and make separate returns for income tax. An exemption of not less than three hundred dollars ($300.00) shall be allowed for each dependent member of the family of an income tax payer under the age of 18 years. *The legislature shall reduce the ad valorem tax from*

time to time and to such amount as the revenue derived from the income tax will justify. In the event the legislature levies an income tax, such tax must be levied upon the salaries, income, fees, or other compensation of state, county and municipal officers and employees, on the same basis as such income taxes are levied upon other persons. All income derived from such tax *shall be held in trust for the payment of the floating debt of Alabama until all debts due on Oct. 1st, 1932, are paid and thereafter used exclusively for the reduction of state ad valorem taxes.*" Michie Cumulative Supplement 1936, Code of Alabama, pp. 16, 17, (Italics supplied.) 232 Ala. 583.

In as much as the majority opinions sustains the Act in its entirety, it would be futile and a useless labor to determine whether or not the tax as to employees is separable and subject to be stricken so as to sustain the remainder.

However, on consideration stated, it is my opinion that the legislature exceeded its power in attempting to tax the wages—the income—of employees without allowing the constitutional exemptions, and in devoting the levy to purposes other than prescribed by the Amendment, and to this extent I dissent from the holding of the majority.

This section read in its entirety clearly restricts the power of the legislature to "levy and collect taxes *for state purposes* on net incomes from whatsoever source derived" at the constitutionally fixed

rate; allowing exemptions of $1,500.00 from the income of single persons, and $3,000.00 for married persons, and $300.00 "for each dependent member of the family of an income tax payer under the age of 18 years. 'All income derived from such tax shall be held in trust for the payment of the floating debt of Alabama until all debts due on Oct. 1st, 1932, are paid and thereafter used exclusively for reduction of state ad valorem taxes."

While the legislature had the power, prior to the adoption of said section 22, to levy an income tax as an excise tax, said power was limited by the decision of this court in Eliasberg Bros. Mercantile Co. v. Grimes, 204 Ala. 492 by characterizing such income tax "a property tax" within the influence of Sections 214 and 217 of the Constitution.

The major purpose of the Constitutional Amendment, as held in State v. Weil, supra, was to overcome the effect of the decision in the Eliasberg Bros. Mercantile Co. Case, and to set up in the Amendment the full scope and limits of legislative power in respect to such taxation.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1936

No. 724

A. A. CARMICHAEL, As Attorney General of the State of Alabama, JACOB L. KAUFMAN, As Chairman and Member, and LUCIEN C. BROWN and JAMES A. LIPSCOMB, As Associate Members of the Unemployment Compensation Commission of the State of Alabama,
Appellants,

vs.

SOUTHERN COAL AND COKE COMPANY, A Corporation,
Appellee.

BRIEF AND ARGUMENT
OF
BORDEN BURR, NIEL P. STERNE and MARION RUSHTON, ATTORNEYS FOR THE APPELLEE

BENNERS, BURR, MCKAMY & FORMAN,
KNOX, ACKER, STERNE AND LILES,
RUSHTON, CRENSHAW AND RUSHTON,
Of Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1936

No. 724

A. A. CARMICHAEL, As Attorney General of the State of Alabama, JACOB L. KAUFMAN, As Chairman and Member, and LUCIEN C. BROWN and JAMES A. LIPSCOMB, As Associate Members of the Unemployment Compensation Commission of the State of Alabama,
Appellants,

vs.

SOUTHERN COAL AND COKE COMPANY, A Corporation,
Appellee.

BRIEF AND ARGUMENT OF APPELLEE.

STATEMENT OF THE CASE.

In order to comply with the Rules of the Court it has been necessary for appellee to file its brief in advance of receiving a copy of appellants' brief. On account of this we make a brief statement of facts.

Appellee, in a bill showing diversity of citizenship and requisite jurisdictional amount, sought interlocutory and final decrees forbidding appellants, the appropriate officials of the State of Alabama, enforcing against appellee the provisions of an Act of the Legislature of Alabama desiginated the Alabama Unemployment Compensation State (hereinafter referred to as the state act).

Appellee's bill of complaint asserted the invalidity of the state act for a number of reasons. Repugnancy to both the Constitution of the United States and of the State of Alabama was pointed out.

Since the decision of the Statutory District Court in this case the Supreme Court of Alabama has held the state act in keeping with the Alabama Constitution (thus relieving this Court of the consideration of this question), and it has also *construed the state act as being dependent upon the validity of the Federal Social Security Act*[1] (hereinafter referred to as the federal act), thus imposing upon this Court the necessity of determining the federal question involved in the constitutionality vel non of the federal act.

Appellee's bill of complaint is found on pages 1 to 154 of the Record, and the grounds asserting the invalidity of the state act because violative of the Constitution of the United States, and because of the invalidity of the federal act, are found in Section 11 (R. pp. 7-8) and in Sections 15, 16 and 17 (R. pp. 16-21).

The allegation that appellee will suffer great and irreparable injury for which it has no adequate remedy at law, and no redress or remedy except in a court of equity, and the facts in support of this allegation may be found in Section 18 (R. pp. 21-24) of the bill.

The United States District Judge for the Middle District of Alabama granted a restraining order pending the organization and action of the Statutory Court. (R. pp. 155-156).

Following the setting down of the case for hearing before the statutory court the appellants filed their answer (R. pp. 161-177).

By stipulation of counsel (R. p. 178) the case was

[1]Emphasis ours unless otherwise indicated.

submitted to the Statutory Court (a) on appellee's application for an interlocutory injunction, and (b) for final decree on the bill of complaint as amended, the orders of the District Judge or Court made prior to submission, proof of service and notice, appellants' motion to dismiss, appellants' answer, written affidavits of appellee (R. pp. 182-271) and written affidavits of appellants (R. pp. 271-287).

Findings of fact and conclusions of law were made by the Statutory Court (R. pp. 291-297).

On December 15, 1936, the Statutory Court rendered its final decree (R. pp. 298-299) granting appellee the interlocutory injunction as prayed for and by final decree making the injunction perpetual, and declaring the state act "unconstitutional and void because in conflict with the Fourteenth Amendment of the Constitution of the United States and of Article I, Section 23 of the Constitution of Alabama."

Pursuant to the statutes appellants appealed from the decree of the Statutory Court to the Supreme Court of the United States (R. pp. 300-308).

The factual averments in the bill establishing the right of the appellee to invoke the jurisdiction of this court for the purpose of deciding the controversy which has arisen between it and the defendants under the Constitution of the United States upon the asserted unconstitutionality of the State Act, are admitted by the answer of the appellant. The following facts are either admitted by defendants' answer or established without conflict by the evidence:

1. STATUS OF APPELLEE.

That since prior to 1915 appellee has been continuously engaged in the State of Alabama in the business

of mining and selling coal in various parts of the United States; that appellee and its employees who are subject to the state act are engaged solely in intrastate business; that it has invested a large sum of money in an extensive plant for mining and selling its products in Shelby County, Alabama; that in the conduct of its business appellee has acquired a valuable and substantial good will with customers in the State of Alabama and throughout the United States; that it has employed in its operations approximately three hundred employees.

That appellee pays annually to the State of Alabama the approximate sum of $37,300 for ad valorem and other forms of taxation.

That in accordance with the terms and schedule of exactions imposed by the state act appellee was obligated to pay the Alabama Unemployment Compensation (hereinafter referred to as the Commission) Commission the sum of $33,519.17 at the time of the filing of its bill.

2. STATUS OF OTHER ALABAMA EMPLOYERS.

It sufficiently appears from the evidence that the classification of employers under the state act is arbitrary and discriminatory. The cross section drawn by the evidence indicates that there are employers who, for several years, have operated, and who expect in the future, judging by the experience of the past, to operate, without any of their employees becoming eligible for compensation, employers who have operated and expect to continue to operate continuously throughout the year; employers whose business is of a seasonal nature and whose employees, on account of this fact, will be unemployed for long periods of time during the year; employ-

ers whose experience record shows that they have had no reduction of employment personnel for the past several years, and expect to have none in the future, and employers who have been forced to reduce personnel by reason of the character of their businesses, and who are faced in the future with the probability of such reductions continuing; employers who have reduced wages during the depression and employers who have not made such reductions. The evidence is without dispute that at the time of the enactment of the state act there existed no previous surveys or statistical or actuarial studies from which anything but the wildest guess could have been made in reference either to the amount of unemployment which might be expected in the future, as to the number of employees who might become eligible for benefits, as to the amount of money necessary to pay the probable benefits, or as to the schedule of exactions necessary to be imposed on employers and employees in order to raise the required funds. These and the many other inequalities, discriminations and arbitrary features of both the federal and state acts will be discussed in detail later.

3. STATUS OF APPELLANTS.

That the defendants are officers of the State of Alabama, residing in or having their offices in Montgomery, Alabama, charged by the laws of Alabama with the duty of enforcing and administering the state act, and that defendant Kaufman, as Chairman and Member, and defendants Brown and Lipscomb as Associate Members of the Unemployment Compensation Commission of the State of Alabama (hereinafter referred to as the Commission) are especially charged by the act with the duty of its administration.

That the Commission is actively engaged in administering the state act, has organized itself with numerous employes; has opened and is maintaining offices in different parts of the state; has spent and is continuing to spend large sums of money in publicizing the provisions of the state act and of the federal act, and in attempting to enforce the state act; that acting solely under the authority of the act it demanded of plaintiff and all other employers the payment on or before the 5th day of October, 1936, of the exactions imposed by the act upon employers and employes (the employers being made responsible by the act (Sec. 4 (d)) for collecting from employes and paying to the Commission the exactions imposed upon its employes) and demanded and required and is demanding and requiring the making by the employers and filing with the Commission of various voluminous reports in reference to their employe relationships and other matters affecting their local businesses.

The extent to which the Commission has gone as against the plaintiff is sufficiently proven by copies of papers served by it upon the plaintiff, which are attached to the bill of complaint and marked "Exhibits E, E1 and E2 to E10," both inclusive. (P. 59 to 154.)

4. APPELLANTS' INTENTION AND THREATS TO ENFORCE ALL PROVISIONS AND PENALTIES OF THE ACT AGAINST APPELLEE

The threats and intention of defendants to enforce the act to its fullest extent against appellee and other employers, and to impose upon them all the penalties provided for by the act for default or violation of its provisions or of the orders of the Commission are frankly and fully admitted, the position of the appellants being

that the act is valid in all respects, that it is their duty to enforce, and that they intend to perform this duty.

It is therefore admitted that unless protected by the injunctive process of this court, appellee faces immediately the imposition of the following, among other, provisions and penalties of the act:

(a) The payment of interest at the rate of one per centum per month on all past due payments (Sec. 15, state act).

(b) The imposition of a fine of not less than twenty dollars nor more than two hundred dollars, or imprisonment in the county jail not longer than sixty days, or of both such fine and imprisonment for appellee's willful failure or refusal to make payment of the exactions when and as required by the Commission (Sec. 15 of the act).

(c) The imposition of a fine of not less than twenty dollars nor more than two hundred dollars, or imprisonment in the county jail not longer than sixty days, or of both such fine and imprisonment for appellee's willful failure or refusal to furnish any reports when and as required by the Commission, or to appear or testify or produce records when and as required by the Commission (Sec. 15 of the act).

(d) Each day of such failure or refusal constitutes a separate and distinct offense (Sec. 15 of the act).

(e) Any violation of any provision of the act (the Commission, as we shall hereafter see, has plenary power to extend the operation of the act through rules and regulations) for which the act does not expressly prescribe a penalty is made a misdemeanor punishable by fine of not less than twenty nor more than fifty dollars, or by imprisonment in the county jail not longer than thirty days, or by both such fine and imprisonment (Sec. 15 of the act).

We also assert, and will hereafter demonstrate, that under the interlocking provisions of the federal act and the state act, any payments made by appellee to the Commission are required to be at once sent to and disposited with the Social Security Board (hereinafter referred to as the Board) at Washington, and to remain subject to its entire control, with no provision of any kind made for a refund in the event the act is judicially declared invalid.

Appellants do not seriously deny (if the act is invalid) that appellee is threatened with great and irreparable injury, and that it has no adequate legal remedy for its prevention except through the equity injunctive power of the court.

Part I.

THE ALABAMA UNEMPLOYMENT COMPENSATION ACT IS DEPENDENT UPON THE VALIDITY OF TITLES IX AND III OF THE SOCIAL SECURITY ACT. THESE TITLES BEING UNCONSTITUTIONAL, THE STATE ACT MUST FALL.

Proposition I.

THE CONSTRUCTION BY THE SUPREME COURT OF ALABAMA OF THE ALABAMA UNEMPLOYMENT COMPENSATION ACT INSOFAR AS IT DOES NOT RELATE TO ITS VALIDITY VEL NON UNDER THE CONSTUTITION OF THE UNITED STATES WILL BE FOLLOWED BY THE SUPREME COURT OF THE UNITED STATES.[1]

Proposition II.

THE SUPREME COURT OF ALABAMA HAS SO CONSTRUED THE STATE ACT AS TO HOLD THAT

[1]For supporting authorities and argument see our brief and argument.

BY ITS TERMS IT IS INVALID AND INOPERATIVE IF TITLE IX OR TITLE III OF THE FEDERAL ACT IS UNCONSTITUTIONAL.

Proposition III.

TITLE IX OF THE FEDERAL ACT IS UNCONSTITUTIONAL BECAUSE ITS ENACTMENT WAS BEYOND THE ORBIT OF CONGRESSIONAL POWER.[2]

Proposition IV.

TITLE III OF THE FEDERAL ACT IS UNCONSTITUTIONAL BECAUSE (a) ITS ENACTMENT WAS BEYOND THE ORBIT OF CONGRESSIONAL POWER, and (b) IT IS INSEPARABLE FROM TITLE IX AND MUST FALL WITH IT.[3]

Factual Statement Relating to the Above Stated Propositions.

A.—EFFECT OF THE DECISION OF THE SUPREME COURT OF ALABAMA IN REFERENCE TO INTERPRETATION AND VALIDITY OF THE ALABAMA ACT.

On the 18th day of March, 1937, the Supreme Court of Alabama, in an opinion handed down in six cases, sustained the validity of the state act and held that it was not violative of any provisions of the Constitution of Alabama. IT ALSO HELD THAT THE STATE ACT WAS INOPERATIVE IF THE FEDERAL ACT WAS INVALID UNDER THE CONSTITUTION OF THE UNITED STATES AND THAT IN ITS OPINION THE FEDERAL ACT WAS IN KEEPING WITH THE FEDERAL CONSTITU-

[2]For supporting authorities and argument see our brief and argument.
[3]For supporting authorities and argument see our brief and argument.

TION. OTHERWISE STATED IT DECIDED A FEDERAL QUESTION, A DECISION ON WHICH IT FOUND TO BE NECESSARY IN ORDER TO SUSTAIN THE STATE ACT.

Four of the six cases[2] were suits in equity by Alabama employers, as complainants, seeking to enjoin state officials, as respondents, from collecting the exactions imposed by, and from enforcing the provisions of, the state act as against the complainants.

Two of the cases[3] were suits at law brought by plaintiffs, who were employes of defendants, for the recovery of that portion of their earned wages which had been withheld by the defendants pursuant to Section 4(d) of the state act, which imposes a tax of one per centum on the wages of all employes and makes each employer responsible for withholding such per centum from the wages of his employes, for showing the deduction on his pay roll and records, and for transmitting the same to the Unemployment Compensation Fund.

WE FULLY RECOGNIZE THAT THIS COURT WILL NOT QUESTION THE CORRECTNESS OF THE RULINGS OF THE SUPREME COURT OF ALABAMA INSOFAR AS THEY CONSTRUE STATE STATUTES AND DECIDE AS TO WHETHER SUCH STATUTES ARE VIOLATIVE OF THE ALABAMA CONSTITUTION.

We will, therefore, refrain from discussing the allegations of appellee's bill of complaint (R. pp. 11-16)

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[2]Beeland Wholesale Co. vs. Jacob L. Kaufman, as Chairman, et al, No. 198. (The opinion was rendered in this case, affirmances in the other five cases following.)

Talladega Ice and Storage Co. v. A. A. Carmichael, et al, No. 197. West Point Mfg. Co. vs. A. A. Carmichael, et al, No. 200. Alpha Portland Cement Co. v. A. A. Carmichael, et al, No. 201.

[3]P. O. Adams vs. Dwight Mfg. Co., No. 436.

Hubert Killian vs. Gulf States Steel Company, No. 437.

which assert the invalidity of the state act on account of its violation of Sections 3, 6, 22, 35 and other provisions of the state constitution.

We insist that for the same reasons and authorities which preclude us from asking this court to depart from the Alabama Court's conclusion in reference to the asserted invalidity of the state act because in violation of the provisions of the Alabama Constitution appellants are likewise precluded from asking this court not to adopt and follow the construction by the Alabama Court that the state act is dependent upon the validity of the federal act and must fall if the federal act is unconstitutional.

We regard as of first importance in this case the determination by the Supreme Court of the United States of the validity vel non of Titles IX and III of the federal act, and in order that there can be no misunderstanding that the Supreme Court of Alabama thoroughly agrees with this conviction, we now present that part of the opinion of the Alabama Court which holds without equivocation that the determination of the validity vel non of the federal act is a present sine qua non to the determination of the validity vel non of the state act. To insure a clear and definite understanding of the opinion of the court we first set out the contentions of counsel for both parties before the Alabama Court in reference to their respective constructions in this particular of the state act. Attorneys for the taxpayers in the Alabama cases in their brief said:

> "The state act is inextricably interlocked with and dependent upon the federal act and is not intended to and can not operate without the federal act and it is incapable of administration, application or enforcement unless the federal act be constitutional.
>
> * * * * *

"1. THE ALABAMA ACT CAN NOT EXIST WITHOUT THE FEDERAL ACT.

"The Alabama Act can not stand without the federal act. The heart of the Alabama Act is the levying of an exaction upon pay rolls, the sums of money realized by such exactions to be remitted to a federal agency created by the federal act, invested in a trust fund set up by said act, and subsequently returned by the federal agency to the Alabama Unemployment Compensation Commission for disbursement within certain ranges and upon certain conditions prescribed by the federal act. The Alabama agency can not disburse one dollar of the moneys received by it from the levies on pay rolls. It must immediately upon receipt send this money to the National Social Security Board and can withdraw the money only upon requisitions honored by the federal agency. The Alabama Commission can not use any of the funds collected by it from either employers or employes for the purpose of defraying the expenses of the Commission and the other expenses of administering the Alabama Act. It can only requisition and use these funds for the sole purpose of paying unemployment compensation benefits under a state act bearing the approval of the federal agency. The Alabama Commission can not determine the administrative expenditures to be made by it. All administrative expenditures to be made by the Alabama Commission are determined by the National Security Board. All funds for the administration of the Alabama Act are provided by the federal government out of revenues appropriated by the federal act. The National Social Security Board has powers of life and death over the Alabama Unemployment Compensation Commission, as the National Security Board not only determines the amount of administrative expenditures the Alabama Commission may make but has power to entirely cut off funds for administration at any time it may

determine the Alabama Commission is not properly executing the mandates laid upon it by the federal act. These and other provisions of the federal act are so entwined with the state act that the state act is as incapable of existence without the federal act as the heart is incapable of being severed from the veins and arteries without producing death."

* * * * *

"Section 17 as amended on April 21st 1936 provides that the State Act shall become inoperative if either Title III or Title IX of the Federal Act should be declared unconstitutional by the Supreme Court of the United States, and section 18 as amended on April 21st 1936 provides that the State Act shall cease to be operative if the Federal Social Security Act is declared unconstitutional by the Supreme Court of the United States.

"These two inconsistent amendements were adopted on the same day; however, the legislative journals show that the amendment to section 17 was last enacted, and therefore controls if there is any inconsistency in the two amendments. When the Legislature of Alabama provided that the State Act should be inoperative if the Federal Act be declared unconstitutional by the Supreme Court of the United States, this was but their shorthand way of stating that the State Act could and should be operative only in the event the Federal Act was constitutional. Otherwise stated, if the Federal Act is inflicted with constitutional infirmities, the State Act cannot stand because the Federal Act is the indispensable and integral base of the State Act.

"In the court below, attorneys for appellants contended that sections 18 and 17 of the State Act as amended should be construed as a legislative declaration; that the State Act should continue in operation until the date of a decision by the Supreme Court of the United States declaring the Federal Act or Title III or Title IX thereof unconstitutional. We submit that no such construction can be

given to the provisions of section 18 or section 17 as amended. This provision is not one of limitation. It expressly provides for the return of the *unexpended* portions of the funds invested in the Unemployment Trust Fund. It cannot be distorted into evidencing a legislative intent that the State Act should remain in force and effect until the Supreme Court of the United States decided the Federal Act to be invalid, notwithstanding the fact that the Federal Act is clearly unconstitutional. Such a holding would place Alabama in the senseless position of parting with millions of its citizens' funds with no chance of refund or recovery, and of having on its statute books a law which could not possibly function if the Federal Act is unconstitutional. If the Federal Act is unconstitutional it was invalid *ab initio*. It became invalid before the ink of the President's approval dried. 'An unconstitutional act is not a law; it confers no rights; it creates no office; it is in legal contemplation as inoperative as though it had never been passed * * *' *Extein Norton v. Shelby County, State of Tennessee,* 118 *U. S.* 425.

"If the provisions in question were construed as meaning that not the unconstitutionality of the Federal statute but the act of the Supreme Court should end the life of the State Act, then the legislation would be obnoxious to another well-settled principle of constitutional law. The Legislature of Alabama cannot delegate to any person, persons or governmental department power to determine an Act of the Legislature. The fact that the delegate is so exalted an institution as the Supreme Court of the United States would, of course, in no way derogate from the force of this fixed principle of constitutional law. The validity of the State Act, therefore, being dependent upon the Federal Act by its express terms, it is imperative and indispensable that appellees obtain on this record a declaration of the validity vel non of the Federal Act, otherwise

appellant and other Alabama taxpayers continue to be confronted with the necessity of complying with the State Act for an indefinite period although it is abortive if the Federal Act be, as we insist, invalid."

On the contrary, counsel for the state, in their brief before the Alabama Court, contended that:

"The validity of neither Title III nor Title IX of the Social Security Act is involved in this case - - - the Alabama statute is not dependent upon the validity of either Title III and Title IX of the Social Security Act and that consequently the question of the validity of those titles is not before this court in this case - - - appellants contention that the validity of the State law is dependent upon the validity of the Federal Act is not well taken, certainly there is no declaration of such dependency, nor is there legislative intent to that end - - -."

The brief for the state proceeding, quoted Section 17 as amended by the Act of April 21st, 1936, and said:

"This language is easily understood. It states a single condition that was to determine the State Act, namely, the final adjudication by the Supreme Court of the United States that the Federal law is invalid. Confusion would have been invited to make it dependent upon possibly diverse decisions of other courts. Prior to the happening of the specified event the appellants and others similarly situated are liable for their contributions. The provision for a return of contributions already made makes it clear that the Alabama Act was to continue in operation until that event. Validity of the Federal law is not a condition *precedent* to the operation of the State law. But declaration by the Supreme Court of the invalidity of the Federal law is a condition *subsequent* that renders the act inoper-

ative for the future. It fixes a terminal date of the State law."

Therefore, it is clear that this question as to the construction in this respect of the state act was squarely presented to the Supreme Court of Alabama. It was squarely met and answered in the following portion of the opinion of the Alabama Court:

"But in this instance the Federal Security Act had been enacted by Congress. The Alabama Act ties into it, and forms a part of a nationwide economic scheme provided for by the Federal Act. Unless it is tied up to such a widespread program, it probably could not have the influence on economy which is the foundation for its existence. It would be useless, perhaps, for one state to try to effect economic stability in respect to a situation which knows no state boundaries. But the Act is not dependent upon action by other states, but the validity of an existing Act of Congress. Expressly made to depend upon a decision of the United States Supreme Court upholding that Act, *in reality it is merely dependent upon its constitutionality.* Reference is made to the decision of the United States Supreme Court because that is the only court which has the authority effectually to declare it unconstitutional. Dependence upon its decision in that respect is but dependence upon the effect of that decision. Its effect is that the Federal Act is valid or that it is invalid from the beginning. It never existed if it is declared to be unconstitutional. We see no reason why an Alabama statute may not be made to depend upon the *validity* of an existing act of Congress into which it is tied in a way necessary for it to have an effective field of beneficial operation for the public welfare. Such, we think, the status of the Alabama Act, and it cannot be stricken down on that account.

> "It is *necessary* for us to lay down the law of this suit as we understand it, and since the Alabama Act is *dependent* upon the constitutionality of the Federal Act, *it is necessary* to express our opinion as to that insofar as it affects its unemployment features, since the United States Supreme Court has not acted on it. We do not feel disposed to enter into an extended discussion of the question, because it would serve no useful purpose, but we will mention the various contentions which have been made by counsel, and state our views on them."

We, therefore, conclude this analysis of the decision of the Supreme Court of Alabama in construing the state act in the particular above discussed by asserting:

(a) Under the construction of the Alabama Supreme Court the state act must fall if the federal act is unconstitutional.

(b) This court is obligated to follow this construction of the Alabama Supreme Court in reference to the state act.

(c) Titles IX and III of the federal act are unconstitutional and invalid for reasons hereinafter specified.

In support of these propositions we regard a statement of the purposes of the sponsors of the acts, their legislative history, their interlocking provisions, the federal dominance of the state act as of even greater importance than citation of authorities or supporting argument. We believe that a thorough factual statement in reference to an analysis of the federal and state acts will make easier of application the decisions of this court over a period of many years, in demonstration of the invalidity of the federal act and the fall of the state act with the fall of the federal act.

B.—FACTUAL BASIS OF THE FEDERAL ACT AND OF THE STATE ACT, THEIR REAL PURPOSE AND INTERLOCKING FEATURES.

In determining whether Title IX imposes an excise tax for the support of the government or is an attempt, under the pretext of executing delegated taxing power, to pass laws for the accomplishment of objects beyond the orbit of congressional power, and in determining whether Title III is a part of the same device and also incapable of being upheld under the spending powers of Congress, and in considering the allied questions of federal usurpation and surrender of state sovereignty, the court will consider, on a factual basis:

1.—The purpose of the legislation as evidenced by its legislative history which properly includes the announced purposes of its sponsors, statements in hearings before the committees of Congress, and the deliberations of the legislative bodies;

2.—The legislative history of the State act;

3.—The terms and provisions of the acts, and

4.—The administrative acts of the board and commission entrusted with the administration of the respective acts.

We shall discuss these in the order named:

1.—(A)—MESSAGES OF THE PRESIDENT:

On June 8, 1934, the President first presented to Congress the objectives of contemplated social security legislation and named as the first objective in the task of reconstruction "the security of the men, women and children of the nation," etc., etc. (Cong. Rec. Vol. 78, Pt.

10, p. 10770). In the same message he designated "three great objectives—the security of the home, the security of livelihood, and the security of *social insurance.*" Referring more specifically to unemployment, the President said he believed "that the funds necessary to provide this unemployment and old age insurance should be raised *by contribution rather than by an increase in general taxation.*" (Cong. Rec. Vol. 78, Pt. 10, p. 10771).

Accompanying his message of January 17, 1935, the President submitted to Congress the Report of the Committee on Economic Security which he had created.

In this message the President also said:

> "In the first place the system adopted except for the money necessary to initiate it, *should be self-sustaining in the sense that funds for the payment of insurance benefits should not come from the proceeds of general taxation* * * *.

and he stated that with respect to unemployment insurance he had concluded

> "that the most practical proposal is the levy of a uniform federal pay-roll tax, 90 per cent of which should be allowed as an off-set to employers contributing under a compulsory state unemployment compensation act,"

the purpose being to afford a requirement of a reasonably uniform character for all states cooperating with the federal government and to promote and encourage the passage of unemployment compensation laws in the state; *the 10 per cent. not off-set being used for federal and state administration of this "broad system".* (Cong. Rec., Vol. 79, Pt. 1, p. 599).

1.—(B)—REPORT OF THE PRESIDENT'S COMMITTEE ON ECONOMIC SECURITY.

Throughout the report of this committee we find the announced sole purpose of the proposed legislation is to create and maintain, in keeping with the President's messages, a system of uniform unemployment compensation laws. Throughout the report it is made plain that the *monies which are to come from pay rolls are to be the basis for the unemployment insurance.* Among other things, in referring to unemployment insurance, the report states:

> "While we favor unemployment compensation in cash, we believe that it should be provided for limited periods on a contractual basis and without governmental subsidies. Public funds should be devoted to providing work rather than to introduce a relief element in what should be strictly *an insurance system.* * * *
>
> "We recommend as essential the imposition of a uniform pay roll tax *against which credits shall be allowed to industries in states that shall have passed unemployment compensation laws.*" (Report to the President of Committee on Economic Security, p. 14, et seq.)

The committee referred frankly to the "tax credit *device*" which it preferred to a system in which the tax would be wholly collected and then remitted to the states as grants in-aid.

In making the recommendations as to what it termed the "technique" of establishing a federal-state unemployment insurance system the committee proceeds in the conviction that its purpose could be most promptly and

effectively accomplished by federal legislation which would, among other things, (1) *produce uniformity* in the burden by levying a pay roll tax, (2) *stimulate* the passage of compensation laws by the state, by allowing a credit against the federal tax for contributions paid under state laws, the credit to be allowed "only if the state is *cooperating* with the federal government in the administration of unemployment compensation, *expending* the money raised solely for benefits, and in *depositing* all contributions as collected in the Unemployment Trust Fund *in the United States Treasury.*" (Ib. p. 18).

In anticipation of Congress increasing and making more uniform and complete federal control over the administration of the uniform state laws, the committee recommended that the federal act expressly provide that all states must include in their statute a provision for repeal and amendment so as to avoid any *"vested interest"* resulting thereunder, in order that Congress could at any time increase the requirements with which state laws *must* comply.[1]

The report expressed the thought that the offset permitted to any employer who contributes under a compulsory state law "will encourage the speedy enactment of state laws which meet minimum standards of security and fairness." (Ib. p. 17).

The committee recommended that the federal government should grant the states sufficient money for proper administration "under conditions designed to insure

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[1]This suggestion was not only carried out in the federal act (Section 1104), but, in order to make the state's surrender of sovereignty coextensive with the congressional usurpation, it was inserted in the Alabama Act by the amendment of April 21, 1936, of Section 18, so as to provide that "the Legislature reserves the right to amend or repeal all or any part of this Act at any time; and there shall be no vested private right of any kind against such amendment."

competence and probity." Selection of personnel on a merit basis is vital to success.[2]

The committee stated that the grant (appropriated under Title III) for administration would be paid for by the ten per cent. of the tax (imposed by Title IX) against which no credit is allowed.

1.—(C)—HEARINGS BEFORE COMMITTEE ON WAYS AND MEANS OF THE HOUSE OF REPRESENTATIVES, AND ON FINANCE OF THE SENATE.

The bald purpose to use the taxing power as a device or disguise for the accomplishment of objects beyond the power of Congress became even more unmistakable during the hearings before these committees. Time and space prevent bringing all the evidence of this before the court, but the following is set forth as being illustrative and illuminating.

William M. Leiserson, Chairman of National Mediation Board, and a member of the Technical Board on Unemployment Insurance of the Committee on Economic Security, said

> "The Federal law is designed only to collect this tax *in order to get the states to enact certain laws.*" (Hearings before House Ways and Means Committee, p. 418).

Dr. E. E. Witte, Executive Director, Committee on Economic Security, frankly stated that,

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[2]To insure irrevisable power in the federal government as to determining personnel and its selection, one of the "must" provisions of the act as adopted recites that "(1) all compensation is to be paid through public employment offices in the state *or such other agencies as the Board may approve.*" [903(a)]. The Alabama Act, as originally drawn, provided for the creation of public employment offices. This was stricken by amendment, thus leaving the payment of all compensation to "such other agencies as the Board may approve."

"If there should be state laws that are utterly unfair we have a *club* here; *we won't give them the administration fund, and they won't be able to administer the law at all unless they dig into their own pockets to pay the administration costs. They cannot use the unemployment compensation fund for that.*" (Hearing before Committee on Ways and Means on H. R. 4120, p. 154.)

"Offsetting these appropriations will be the receipts from taxes which are imposed in connection with unemployment compensation and old-age annuities. Unemployment compensation will not involve *any cost* on general revenue." (Ib. 136).

Mr. Leiserson, in supporting the credit device plan in preference to a straight out subsidy plan, referred to the fact that the Supreme Court had said in the Child Labor Cases that Congress could not "under the guise of a federal regulation" regulate conditions within the states. But, Mr. Leiserson hoped:

"* * * Maybe they ('the Supreme Court') will not hold that now. But I felt, and most of the members of committee felt, that we can not jeopardize this step that needs to be taken now on any theoretical argument about what the Supreme Court might or might not do." (Ib. pp. 400-1.)

Mr. Hill, a member of the committee, adverted to the grant-in-aid system of constructing highways, describing that grant as a pure subsidy arising from general taxes and paid out of the treasury. He added, however, that the subsidy for roads

"does not involve, of course, the question of levying taxes upon employers or employes to raise the fund." (Ib. 413).

Mr. Leiserson replied that the highways could be connected with interstate commerce, whereas it

> "would be pretty difficult to connect manufacturing of, let us say, pocketbooks within a state to interstate commerce." (Ib).
>
> * * * *
>
> "The federal law is designed only to collect this tax in order to get the states to enact certain laws."[1]

William Green, President of the American Federation of Labor, advised that the grant-in-aid plan be adopted so as to lessen the question of constitutionality. (Ib. 389).

Abraham Epstein, Executive Secretary of the American Association for Social Security, advised separate bills,—one as a tax measure. In the other he proposed that Congress would say to the legislatures of the states that if they want protection for their people, and if they will guarantee that they will administer such a system rightly *"we will turn over to you the money we collect from your state."* The governors and the legislatures will see that the tax is enacted. (Ib. pp. 563-4). His suggestion as to splitting up the measure into two bills, he stated, was based on the idea that

> "it is safer constitutionally to separate the revenue raising part from the disbursement part. . ." (Ib. p. 564).

He stated that by separate bills one step is taken away from the constitutional problems,[1] and the entire plan in

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[1]It will be found that the specter of lack of congressional power continued to arise throughout the consideration of this legislation. Of course, at that time the decisions of the Supreme Court of the United States in the cases of United States v. Butler, 297 U. S. 1, and Carter v. Carter Coal Company, 298 U. S. 238, had not been handed down.

the same bill would permit the court to say "you set up that tax for a specific purpose," the answer to which would be, if separate bills were provided,

> "* * * 'Why, we set up the tax, that is all. That was just the revenue for the government, general revenue. We happen to be disbursing an equal sum in a separate bill.' Well, that is another story." (Ib. p. 565).

Alvin Hansen, Chief Economic Analyst, Department of State, stated that the amount withheld (the 10 per cent.) would be used for the purpose of subsidizing or making grants-in-aid to the state employment offices and building up the standards of administration of the various states. (Ib. 380).

Senator Black brought out from Senator Wagner that if the state desired to raise its benefits through some other method of taxation, as by correcting the maldistribution of income, "it would not be permitted to do so under the bill as framed, and secure federal aid and credit on federal taxes; that the funds intended for state administration come from the 10 per cent. retained by the federal government." (Hearings before Senate Committee on Finance pp. 23-24.)

Senator Black also said that except for administration the state had no funds to expend except from the funds raised in such state (Ib. p. 120); that the state could not substitute excess profits or any other tax for the contribution exacted of employers (and employes); that (except for the claimed precedent of the inheritance tax credit plan) there is no precedent (which Miss Perkins could at the moment think of) for this "system of federal aid, we will call it, *or federal coercion*,—that is what it amounts to, so far as I am concerned." (Ib. p. 122.).

Senator Barkley asked for Miss Perkins' theory as to the justification for this *"form of coercion or intimidation, or whatever it is."* He fears the theory that Congress can say to a state, "If you do not pass a law yourself we are going *to take it away from you*, and you do not get any of it back. (Ib. p. 126).

1.—(D)—REPORTS OF CONGRESSIONAL COMMITTEES AND THE DELIBERATIONS OF THE LEGISLATIVE BODIES.

The reports of the legislative committees in reference to,[1] and remarks of senators and congressmen during the consideration of the federal act, are in such complete keeping with the statements made by sponsors of the legislation before the committees and by members of the committees that it is not necessary to bring them in detail to the attention of the court.

We, therefore, close the factual statement relating to this subdivision by stating that although approximately two hundred appearances were made before the committees of the Congress, the report of the hearings before the committees comprised 2492 pages, and the debates in Congress extended over a period of nine days in the House and six days in the Senate, with consideration being given the measure at other times, there can not be found one word to indicate that it was the *purpose* of the federal act to impose a tax for the support of the government. On the contrary, it appears that the taxing power of Congress was deliberately used as a "device" to shape, control and regulate purely domestic affairs and policies of the states, to wit, matters of compulsory insurance, pensions, minimum wages and relationships

[1]Senate Committee Report (No. 628, 74 Congress, 1st Session)
House Report (No. 615, 74 Congress, 1st Session.)

between employers and employes in no wise engaged in commerce between the states. It is manifest that the admitted intent of the act was to set up an inescapable inducement to the respective states to submit to the imposition upon them of the federally determined domestic policies, a system by which, on the one hand, the states are coerced so to submit by reason of heavy taxation, and, on the other hand, there is purchased, with staggering sums of federal funds, submission to federal regulation in respect of subjects reserved to the states by the Constitution of the United States. It appears without any adverse inference that the exactions imposed by Title IX were not intended to be taxes, but were called taxes for the purpose of enabling the Congress, under the pretense of levying a tax, to exert a power not granted to Congress by the Constitution of the United States, but reserved, by the Tenth Amendment, to the states.

2.—The Legislative History of the State Act.

The federal act was signed by the President on the 14th day of August, 1935. It was responsive to the purposes so clearly indicated by its past history and so forcefully pronounced by its sponsors.

The state act, fashioned in Washington in accordance with the federal pattern, became, on the 14th day of September, 1935, the first state law enacted after the enactment of the federal act. Within a few days after the enactment of the federal act, a model was brought to the Alabama Legislature in session at Montgomery, and, with the addition of the provision imposing a one per cent. tax upon employes, was adopted, as shown by the legislative journal, in six legislative days,—one day more than the shortest period possible under the Alabama system of enacting legislation. It is amazing and is con-

clusive of the lack of legislative effort at classification and of the complete surrender of state sovereignty to the coercion of Title IX and the purchase of Title III of the federal act that a measure of such tremendous importance was routed through the Rules Committees of the two Houses, reported and advanced upon the calendar for immediate action without hearing before either committee, and adopted by unanimous vote without debate.

Prior to the enactment of the federal model by the Alabama Legislature this question had never been given any consideration in the State of Alabama. No economic or actuarial surveys had been made; there were in existence no data as to unemployment experience, and there was a complete lack of any information to serve as a base either as to the amount of money that would be required to cure or alleviate the evils of unemployment or as to the amount of funds that would be necessary to pay the benefits contemplated under the schedules set up in the act. (Halfpenny Affidavit, R. pp. 182-185, 186). The act itself, in recognition of the fact that there had been no previous surveys or research to serve as a base for any reasonable classification of the employers and employes included or excluded from the provisions of the act, provided for a merit rating to begin in the year 1941. This provision of the act [Section 4(c)] prevents an employer from being considered for merit rating unless he has had an experience of "at least three calendar years throughout which his employees received or could have received benefits when and as unemployed and eligible." These provisions for merit rating, based on experience, accompanied by the complete absence of any provision for hearing or judicial review, or any definition, test or standard, leave the state act to be considered as one without provision for merit rating past, present or future. The conclusion inevitably follows that the Legislature

acted without any regard to state history, the necessity of or the amount needed for relief of unemployment, the financial ability of those upon whom the cost was saddled, and was actuated solely by the coercion-purchase of the federal act. *Thus, the legislative history of the state act nakedly discloses its federal parentage.*

3.—The Terms and Provisions of the Acts.

The absolute dependency of the state act upon the federal act from a practical and intrinsic standpoint is demonstrated by a comparison and analysis of the two acts.

TITLES.

The title of the federal act is, among other things, "to *enable* the several states to make more adequate provision for the administration of their *unemployment compensation laws*"; that of the state act is, among other things, "to create a system of *unemployment compensation;* to provide for an *unemployment compensation fund;* to authorize reciprocal benefit arrangements with other states or the *federal government;* to establish an *unemployment compensation fund*".

THE INDISSOLUBLE UNION OF TITLE III AND THE STATE ACT.

Section 301, Title III, of the federal act makes a direct grant of federal funds to each state which has *"an employment compensation law approved by the Board * * * for the purpose of assisting the states in the administration of their unemployment compensation laws"*, while Section 302 provides for the payment to each state of "such amounts from the appropriation as the *Social*

Security Board determines to be necessary for the proper administration of the state law", the determination to be based, among other things, on "(3) *such other factors as the Board finds relevant.*"

Section 16 of the state act creates a special fund designated as "the unemployment compensation administration fund" *to be expended solely* for the *administration of the act* with the provision that all *federal moneys* alloted or apportioned to the state by the *Federal Social Security Board* shall be paid into the *unemployment administration fund.*

Section 17 of the state act carried an appropriation for administrative expenses. This appropriation was repealed by an amendment to Section 17 of the act (adopted on April 21st, 1936); therefore, the administration of the state act is dependent *solely upon federal largess which is dependent upon the irrevisable discretion of the Federal Board.*

Section 302 of the federal act authorizes the payment out of the sums appropriated by the Secretary of the Treasury only upon certificate of the Board.

Section 303 (a) provides that the Board *shall make no certification* for payment to any state unless it finds that the law of such state, approved by the Board under Title IX (note the tieing together of Titles III and IX), includes provisions for:

(1) Such *methods of administration* (other than those relating to selection, tenure of office, and compensation of personnel) as *are found by the Board to be reasonably calculated* to insure full payment of unemployment compensation when due[1]; and

(2) *Payment* of unemployment compensation *solely*

[1]Thus all methods of administration are under the irrevisable dictation of the Federal Board.

through public employment offices in the state *or such other* agencies as the Board may approve[1]; and

(3) Opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied; and

(4) The *payment* of all money received in the employment fund of such state, *immediately upon such receipt,* to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by Section 904; and

(5) Expenditures of all money requisitioned by the state agency from the Unemployment Trust Fund, *in the payment of unemployment compensation,* exclusive of expenses of administration; and

(6) The making of such reports, in such form and containing such information, as the Board may from time to time require, and compliance with such provisions as the Board may from time to time find necessary to assure the correctness and verification of such reports; and

(7) Making available upon request to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation and employment status of each recipient of unemployment compensation, and a statement of such recipient's rights to further compensation under such law.[2]

Section 303(b) of the federal act provides that whenever the Board, after reasonable notice and opportunity for hearing to the state agency charged with the administration of the law, finds that there is,—

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[1]Section 10(j) of the original state act required the Commission to establish and maintain free public employment offices, etc. This was stricken by the amendment of April 21, 1936, thus requiring payment to be made exclusively through federal officers or control.

[2](6) and (7) constitute a complete surrender to the federal government of state sovereignty over employe relationship.

(1) A denial, in a substantial number of cases, of unemployment compensation to individuals entitled thereto under such law; or

(2) A failure to *comply substantially with any provision specified* in sub-section (a) of Section 303; the Board shall notify such state agency that further payments will not be made to the state until the Board is satisfied that there is no longer any such denial or failure to comply. Until it is *so satisfied it shall make no further certification to the Secretary of the Treasury with respect to such state.* [Section 303(a) leaves it to the irrevisable discretion of the Federal Board as to whether the state shall receive any funds, while Section 303(b) gives them the irrevisable right to take it away.]

The state act accepts the above quoted provisions of the federal act and by (i) of Section 10 expressly provides for state-federal cooperation and for the acceptance of "any sums allotted or apportioned to the state for such administration" and for compliance with "all reasonable federal regulations governing the expenditures of such sums." All Alabama contributions *immediately* go to the United States Treasury and can be *requisitioned only* for payment of unemployment compensation, which means that if the state act is invalid, the funds are beyond recovery.

Not only therefore, is the operation of the state act made dependent upon the funds to be supplied by the federal act, but its functioning is dependent upon the whim of the Federal Board charged with the duty of administering the federal act. The Board, among other things, has the right to determine methods of administration, to designate the agencies through whom payment of all benefits is to be made; to assure itself that the money requisitioned by the state agency from the Unemployment Trust Fund in Washington goes solely to the pay-

ment of unemployment compensation, exclusive of expenses of administration; to require the making of any reports of any kind or character and the making available upon request to any agency of the United States of the name, address, occupation and employment status of every individual in Alabama receiving unemployment compensation. Not only is the Board given these plenary rights, but having received the power of determining the amount that the State is to receive under the court martial provision (Sec. 302(a) 3) based "on such factors as the Board finds relevant", and being without authority to give a certificate for requisition of funds thus allotted unless the provisions of Section 303(a) are all complied with, it is then given the absolute right for all time to take away from the state any future payments if it is of the opinion that the State has in any way failed to comply substantially with the provisions of Section 303(a) or has denied in a substantial number of cases unemployment compensation to individuals entitled thereto.

THE INDISSOLUBLE UNION OF TITLE IX OF THE FEDERAL ACT AND THE STATE ACT

Section 901 of Title IX of the federal act imposes on and after January 1, 1936, on every employer (as defined in Section 907) for each calendar year, an excise tax with respect to having individuals in his employ equal to the following percentages of the total wages (as defined in Section 907) payable by him (regardless of the time of payment) with respect to employment (as defined in Section 907) during such calendar year:

1.—One per cent. for the calendar year 1936;

2.—Two per cent for the calendar year 1937;

3.—Three per cent. for every calendar year after December 31, 1937.

Section 4 of the state act exacts from employers contributions to be paid by each employer *"in such manner and at such times as the Commission may prescribe."*

The state act, unlike Title IX, but similar to Title VIII, of the Federal Act, imposes an income tax on each employe amounting to one per cent. of his wages, the employer being made responsible for withholding the tax from the wages of his employes, showing the deduction on his pay roll records, and transmitting the same to the Commission.

Section 902 of the federal act provides for a check-off or credit not in excess of 90% of the excise tax imposed by Section 901, the credit to be "allowed only for contributions made under the laws of states certified for the taxable year as provided in Section 903." Regulations 90 of the U. S. Treasury Department, relating to the excise tax of employers, and conforming regulations of the State Commission (R. p. 141-145), provide as a sine qua non for obtaining the credit that "the Treasury Department must be furnished with a certificate from the Unemployment Compensation Commission showing the amount of contribution the employer has made to the fund," together with such further information as may be required showing that the state law has been approved by the Social Security Board in accordance with the provisions of Section 903(a) of the federal act.

Until and unless Alabama enacts an operative ememployment compensation law approved by the Federal Board, employers will be compelled to to pay the full amount of the attempted tax imposed by Section 901 of the Federal Act and will be deprived of the credit provided for by Section 902 and also of any additional

credits allowed within the discretion of the Board by Sections 909(a) and 910 (a). It is significant to compare this provision for credit with the provision in the Guffey Coal Bill, which was stricken down by the Supreme Court of the United States because it was a penalty disguised as taxation and therefore not within the orbit of congressional power. (Carter v. Carter Coal Co., 298 U. S. 238.)

The Guffey Bill, after imposing on the coal "an excise tax of 15 per centum on the sale price at the mine, or in the case of captive coal, the fair market value of such coal at the mine," provided for a credit in the following language:

> "Provided further, That any such coal producer who has filed with the National Bitumious Coal Commission his acceptance of the code provided for in sections 805, 806, 807 and 808 of this chapter, and who acts in compliance with the provisions of such code, shall be entitled to a drawback in the form of a credit upon the amount of such tax payable hereunder equivalent to 90 per centum of the amount of such tax, to be allowed and deducted therefrom at the time settlement therefor is required, in such manner as shall be prescribed by the Commissioner of Internal Revenue. Such right or benefit of drawback shall apply to all coal sold or disposed of from after the day of the producer's filing with the Commission his acceptance of said code in such form of agreement as the Commission may prescribe. No producer shall by reason of his acceptance of the code provided for in sections 805, 806, 807 and 808 of this chapter or of the drawback of taxes provided in this section be held to be precluded or estopped from contesting the constitutionality of any provision of said code, or its validity as applicable to such producer." (Aug. 30, 1935, c. 824, g 3, 49 Stat. 993.)

There is a complete tie-up between the federal and state act in reference to the amount of the exaction and the provision for credit against the federal tax. The state exaction imposed by Section 4 carries the exact percentages necessary to absorb the credit of 90 per cent provided for by Section 902 of the federal act. Not only is this true, but the two acts are so unfied, together with the regulations adopted by the Treasury Department and those adopted by the state agency, as to allow the credit only upon the certificate of the state officer being furnished to the United States Treasury Department.

It therefore appears that it is only through the perfect coordination and cooperation existing between the two acts that the Alabama taxpayer, even though the Alabama statute has been approved by the Federal Board, can secure the benefit of the credit allowance.

Note also that under the regulations adopted by the Treasury Department not only must a certificate of the state agency be furnished before the credit is allowed, but proof must be furnished the Treasurer as a condition precedent to the allowance of the credit that the Federal Board has "found that the law of the State contains the provisions specified in Section 903 of the Act."

The federal act (Sec. 904) and the state act (Sec. 3) create an unemployment compensation fund which is to be deposited in the securities of the Federal Unemployment Trust Fund, which fund must be used *solely* for the purpose of paying compensation benefits; the funds so deposited not only pass entirely under federal control, but are "invested as a single fund," together with all funds paid in from all other states adopting a federally approved unemployment compensation law. The investment therefore becomes a mixed pool, with no earmarks separting the funds of Alabama from any other state.

It is also provided by both acts that the moneys paid into the investment pool can never be withdrawn or requisitioned by the state except for the purpose of being *"used solely in the payment of compensation exclusive of expenses of administration"* [Sec. 903 (4) federal act]; the state act [Sec. 3 (d)] providing that the investment must be made in the Federal Unemployment Trust Fund *"so long as said Trust Fund exists, notwithstanding any other statutory provision to the contrary" and* [Sec. 3 (b)] that *"the fund shall be administered in trust and used solely to pay benefits"*; assuring complete control over the funds by the express reservation of the right to amend or repeal, and by the express provision that *"there shall be no vested private right of any kind against such amendment or repeal"*[1] and by making provision in the event either Title III or Title IX is held unconstitutional, there shall be returned only the unexpended portions of the "levies, contributions, taxes or pay roll deductions."

There is no provision made of any kind in either act by which either the state or contributors or taxpayers are provided a remedy for recovery of any portion of the funds in the event of the judicial determination that either the federal or the state law is unconstitutional.

It is contended by appellants that those who pay in the exactions may derive comfort from Section 904 (f) of the federal act, which provides, "The Secretary of the Treasury is authorized and directed to pay out of the fund to any State agency such amount as it may duly

[1]We have previously seen that the purpose of this provision was to reserve to the Congress the unlimited right to impose such additional regulatory rules upon state agencies as a condition precedent for federal funds and credit allowances as the Congress might see fit to enact. The federal foot having thus been planted firmly within the door to the citadel of state sovereignty, no doubt was left as to the future intention of taking complete possession. The state's acquiesence to this federal control is indicated by its enactment on April 21, 1936, of the amendment to Section 18 of the state act.

requisition not exceeding the amount standing to the account of such State agency at the time of such payment." It must be remembered, however, that the federal act expressly provides [Section 903 (4)] that "all money withdrawn from the Unemployment Trust Fund by the state agency shall be *used solely* in the payment of compensation, exclusive of expenses of administration" and that the state act authorizes the Alabama agency to withdraw from the Unemployment Compensation Fund funds to be *"used solely to pay benefits"* [Sec. 3 (b)]. Both laws check and double check the intention of both legislative bodies to place Alabama funds into the Federal Treasury and to so provide that they can never be taken out of the Federal Treasury unless the federal law is complied with in all respects, and expressly and specifically unless it is requisitioned for the *sole purpose* of being paid out for compensation benefits. Therefore should the Alabama law be held invalid and no law approved by the Federal Board should be in effect in Alabama, the return of this money depends upon the grace of Congress and the Legislature. Not only is this true as a matter of fact, but the fact is emphasized because neither act provides in the event of invalidity for any suit or recovery by way of refund or otherwise.

Had the state act made adequate provision for the refund of this money, Article 23 of the Constitution of the State of Alabama (Acts 1933, Ex. Ses. 196) and the Budget and Financial Control Act of Alabama (Acts 1932, Ex. Ses. 35, 40) provide that all appropriations are conditional and proportionate and are to be prorated with other obligations each year, the sums remaining unpaid at the end of each fiscal year to lapse absolutely. The constitutional and statutory provisions are construed as providing that the essential expenses of government are to be paid in full as preferred claims, after which all

other claims are prorated. *Abrahamson v. Hard*, 229 Ala. 2. For the fiscal year ended September 30, 1936, only 30.15% of the appropriations was paid. The Comptroller General's official estimate is that for the current year 31.035% will be paid. (See Reports of Comptroller General, last quarter 1935-36 fiscal year, and first quarter, 1936-37 fiscal year).[1]

We have set forth above the principal tie-ins between the two acts. There are many others. For illustration, refer to Section 10(e) and Section 10(i) of the state act, and compare Section 907(a) of the federal act with Section 2(f) of the state act, 907(b) with Section 2 (o), 907(e) with Section 2 (j), 907(f) with Section 2(c), 907(g) with 2(a), 903(5) and (5a) with Sections 6 (1 and 2) of the state act.

SUMMARY AS TO THE INSEPARABILITY OF THE FEDERAL AND STATE ACTS, THE COMPLETE DOMINANCE OF THE FEDERAL ACT, AND THE COMPLETE SUBSERVIENCE OF THE STATE ACT.

The state has, in all substantial particulars, adopted the plans, provisions, requirements, definitions and nomenclature of the federal act; all funds for the payment of cost of administration of the state act depend upon the appropriations of the federal act; the operation of the state act, both in methods of administration and in

[1]The Legislature of Alabama in February, 1937, (subsequent to the rendition of the final decree in this case) attempted to relieve these funds from the operation of the budget provisions of the Alabama Constitution by amending Section 18 of the act as first amended by providing that unexpended funds in the Federal Unemployment Trust Fund to the credit of the state should, in the event of a declaration of unconstitutionality of either federal or state act, be returned to the Commission and be distributed by the Commission pro rata to the contributors instead of being covered into the treasury of the state and subject to the budget provisions of the Constitution. This amendment makes no provision for the return of employe contributions.

the payment of benefits, is dependent upon the provisions of the federal act and the decisions of the federal board; all taxes exacted under the state act are immediately upon collection placed without the state and in the Federal Unemployment Trust Fund with withdrawal limited to requisitions for the payment of benefits under a continually approved federal act. The evidence in this case shows without conflict that in the year 1938, if the state act continues in force, the State of Alabama will turn over to the federal government approximately eight million dollars with complete possession and control thereof vested in the federal board and subject to Section 1104 of the federal act, providing that "the right to alter, amend or repeal any provision of this act is hereby reserved to the Congress," and with the parallel provision of amended Section 18 of the state act providing that there shall be no vested private right of any kind against amendment or repeal. This makes the duration of the state act, so far as its potential operation is concerned, dependent upon conditions which may, at any time in the future, by amendment or repeal of the federal act in whole or in part, be changed. IT THEREFORE FOLLOWS IF THE CONGRESS SHOULD CHANGE THE FEDERAL ACT AND NO LONGER PERMIT THE WITHDRAWAL OF THE FUNDS, THERE IS NO PROVISION TO COMPEL RETURN OF THE MONEY.[1]

[1]Appellants seek to compare the appropriations made to the states under Title III of the federal act to federal-grants-in-aid of the type of public road grants, etc. It is only necessary to read the above analysis to see how entirely different, both in principle and effect, these grants are from the appropriations made under Title III.

4.—The Administrative Acts of the Board and Commission Entrusted with the Administration of the Respective Acts.

The Board, in its administrative releases interpretative of the federal act, recognizes the complementary state and federal acts as an integral system of unemployment compensation in these words:

> "The entire plan of unemployment compensation is a cooperative federal-state system. It insures uniformity with respect to the cost of employers which is essential to make it possible for the states to legislate in this field. It assures the safety of all reserved funds and seeks to secure the efficient administration of unemployment compensation throughout the country."

It is common knowledge in Alabama that the state commission is subject to the nod of the Federal Board; that no question of policy can be determined without federal approval; that in this and similar legislation pending and in the courts the state commission was threatened by the Federal Board with the withdrawal of federal appropriations if it entered into escrow agreements with Alabama taxpayers depositing the exactions due and to become due under the terms of the act, pending the decision by this court of the validity of the federal act and/or of the Supreme Court of Alabama of the state act.

Among other acts of the Board indicating its intent to use arbitrary power over state agencies is its release, No. 295, of Jan 25, 1937. This ruling prohibited all states from requiring employes to sign state severance reports, these reports indicating the leaving by the employe of his employment and the reason for leaving. The

Board acting under the authority of Section 303(a) of the federal act, prohibited the requirement of these severance reports on the theory that the employer might use duress on the employe, thus requiring him to give a false reason for leaving which might subsequently affect his eligibility for compensation under the act. In order to leave no doubt as to what would happen if the states did not obey this ruling, the Board, in its Release, called attention to the fact that all service appropriations are in its hands. Otherwise stated, unless the state agencies submit to the ruling no funds would be approved for administrative purposes. *The whole argument may be summed up in the statement of fact that the Board holds the purse strings on all appropriations under Title III and the Board, in cooperation with the Treasury Department, has an irresistable power over the issuance of credit memoranda under the provisions of Title IX.*

Brief and Argument

FOREWORD

In considering the decree appealed from, this Court will not confine itself to the reasons assigned by the District Court for its decree, but will reexamine the whole record and the findings upon the law and the evidence therein.

Essgee Company vs. United States, 262, U. S. 151-153.
United States vs. Holt Bank, 270 U. S. 49-56.
Keller vs. Potomac Elec. Co., 261 U. S. 428-444.
L. & N. Railroad Co. vs. Garrett, 231 U. S. 298-304.

The District Court in rendering its opinion sustaining its decree issuing temporary and permanent injunctions based its finding on the conclusion that the state act was invalid:

(a) Because in violation of the 14th Amendment to the Constitution of the United States in that the classification of employers was unreasonable, arbitrary and capricious, and

(b) Because in violation of section 23 of the Consituation of Alabama. (R p. 298).

While we submit that the District Court was correct in holding the state act unconstitutional for the reasons assigned by it, it is our conviction that there are many other equally, if not more important reasons appearing in the record as a basis for the asserted unconstitutionality of federal and state acts, and for this reason we respectfully ask the indulgence of the court in presenting for its consideration the entire record.

THE INVALIDITY OF THE STATE ACT ENTITLES PLAINTIFF TO INJUNCTIVE RELIEF.

If the State Act be invalid for any reason plaintiff's only adequate protection is an injunction. If the moneys required of plaintiff by the terms of the state act are paid to the Commission plaintiff is without remedy to collect them back. There are so many reasons why plaintiff is without this remedy we shall not further expand this brief in reciting them all. They are set out in Paragraphs 18 and 19 of the bill (R. pp. 21-24 incl.). They may be roughly grouped as follows:

(a) There is no statute or principle of law in Alabama permitting recovery of such payments once they are made. The state act with reference to refund of taxes erroneously paid does not comprehend such exactions as these. In fact, the representatives of the Commission contend that this is not a tax. They are compelled so to contend. If they admit this to be a revenue measure it is void because it originated in the Senate. If not a tax, of course, it does not fall within the statute providing under certain circumstances for the refund of taxes.

(b) If plaintiff had a right of action it would be only against the individuals who received the moneys. Such suit would be utterly ineffective, as these individuals do not and cannot retain the moneys, but are compelled immediately to remit them to the Board at Washington.

(c) There is no provision for suit to be brought by a person who pays taxes to Alabama officials against any official or agency of the federal government.

(d) Judgment against Alabama officials would be uncollectible as, of course, they would be individually

unable to respond to the demands for the millions of dollars here involved.

(e) Owing to the duality of receipt, custody and control plaintiff would be without remedy because the sovereign to whom the plaintiff paid would no longer have the moneys and the sovereign who had the money sustains no relationship of privity to plaintiff.

(f) The interplaying statutes, state and federal, expressly provide that money can be returned from the national to the state agency *only* for payment of benefits to unemployed eligibles.

(g) Even if judgment could be rendered against the State of Alabama, or any bureau, department or official thereof, plaintiff's recovery would be only a drastically reduced percentage of what plaintiff paid. Article 23 of the Constitution of the State of Alabama (Acts 1933, Ex. Ses. 196) and the Budget and Financial Control Act of Alabama (Acts 1932, Ex. Ses. 35, 40) provide that all appropriations are conditional and proportionate and are to be prorated with other obligations each year, the sums remaining unpaid at the end of each fiscal year to lapse absolutely. The constitutional and statutory provisions are construed as providing that the essential expenses of government are to be paid in full as preferred claims, after which all other claims are prorated. *Abrahamason v. Hard*, 229 Ala. 2. For the fiscal year ended September 30, 1936, only 30.15% of appropriations was paid. The Comptroller General's official estimate is that for the current fiscal year 31.035% will be paid. (See Reports of Comptroller General, last quarter 1935-36 fiscal year, and first quarter, 1936-37 fiscal year).

It is, we submit, obvious that there is no adequate remedy at law. Certainly the most that could be claimed by defendants is that there may be room for a possible contention that plaintiff, after paying, would have

a remedy to recover back at law. Of course, if there is any doubt as to whether or not plaintiff has such remedy at law, this uncertainty of remedy would require the issuance of an injunction.

> "It is a settled principle of equity jurisprudence that if the remedy at law be doubtful a court of equity will not decline cognizance of the suit. Teague v. Russell, 2 Stewart (Ala.) 420. Where equity can give relief plaintiff ought not to be compelled to speculate upon the chance of his obtaining relief at law."

Davis v. Wakelee, 156 U. S. 680, 39 L. Ed. 578.

In holding that injunction properly issued, in *Wallace v. Hines*, 253 U. S. 67, the Court quoted from *Union P. R. Co. v. Weld County*, 247 U. S. 282, as follows:

> "We ought not to leave the plaintiffs to a speculation upon what the state court might say if an action at law were brought."

Both in the Weld case and in *Atlantic Coast Line v. Dalton*, 262 U. S. 425, 426, the Supreme Court held that injunction should issue where there was any doubt as to whether or not a statute authorized recovery of illegal taxes and the Supreme Court of the state had not passed upon the question. Says the Court in the latter case:

> "But the statute mainly relied upon is a recent one, which appears not to have been construed and applied by the highest court of the state. In the absence of such decision we cannot say the remedy at law is plain and adequate."

See to the same effect *Dawson v. Kentucky Distillery*, 255 U. S. 288, 295; *Stafford v. Wallace*, 258 U. S. 495; *Miller v. Nut Margarine Co.*, 284 U. S. 298; *Ohio Oil*

Co. v. Conway, 279 U. S. 813, 815; *Walla Walla v. Walla Walla Water Co.*, 172 U. S. 1, 12; *Pierce v. Society of Sisters*, 265 U. S. 510; *Vicksburg Water Works Co. v. Vicksburg*, 185 U. S. 84.

The threat of harassing repetition (here monthly reports and payments must be made) itself constitutes ground of injunctive relief.

Bank of Kentucky v. Stone, 88 Fed. 383, 392, 174 U. S. 799;

In the Agricultural Adjustment Act Case the Supreme Court held that injunction was the proper remedy:

Rickert Rice Mill, Inc., v. Rufus W. Fontenot, 80 L. Ed. (Adv. Op.) 355.[1]

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[1]The recent opinion of the Supreme Judicial Court of Massachusetts in the case of *Howes Bros. Co., vs. Massachusetts U. C. Commission*, 5 N. E. (2nd) 720-25, cited by appellants, while, as we contend erroneous in its final conclusion, is correct on the question of the remedy when it uses the following language: "The cases at bar set forth extraordinary and exceptional circumstances which justify the interposition of equity. The contributions exacted by the Unemployment Compensation Law are not described therein as taxes. Failure to make the required contribution is denounced under heavy penalties. Section 50. If the contributions are paid and the statute should be held to exceed the constitutional power of the General Court, no definite provision is made for recovery in any form of actions of the amounts paid. Indeed, by section 43 'no person shall be or be deemed to be vested with any property or other right by virtue of the enactment' of the law. The remedies open to the plaintiffs at law are not plain, adequate and complete. The plaintiffs have a direct interest in the subject matter. Without impairing the force of the general rule just stated, the extraordinary circumstances here disclosed afford jurisdiction in equity. Hill v. Wallace, 259 U. S. 44, 62, 42 S. Ct. 453, 455, 66 L. Ed. 822; Terrace v. Thompson, 263 U. S. 197, 215, 44 S. Ct. 15, 17, 68 L. Ed. 255; United States v. Butler, 297 U. S. 1, 60, 61, 56 S. Ct. 312, 316, 317, 80 L. Ed. 477, 102 A. L. R. 914; Rickert Rice Mills, Inc., v. Fontenot, 297 U. S. 110, 56 S. Ct. 374, 80 L. Ed. 513."

Part I.

THE STATE ACT IS DEPENDENT UPON THE VALIDITY OF TITLES IX AND III OF THE FEDERAL ACT. THESE TITLES BEING UNCONSTITUTIONAL, THE STATE ACT MUST FALL.

Proposition I.

THE CONSTRUCTION BY THE SUPREME COURT OF ALABAMA OF THE STATE ACT INSOFAR AS IT DOES NOT RELATE TO ITS VALIDITY VEL NON UNDER THE CONSTITUTION OF THE UNITED STATES WILL BE FOLLOWED BY THE SUPREME COURT OF THE UNITED STATES.

The construction of the highest state court of state constitution and laws will be followed by the Supreme Court of the United States.

Michigan vs. Michigan Trust Company, 286 U. S. 334.

Concordia Insurance Co. vs. School District, 282 U. S. 545.

Chicago M., St. P. & P. R. Co. vs. Ritsy, 276 U. S. 567.

Fairfield vs. County of Gallain, 100 U. S. 47-55.

Proposition II.

THE SUPREME COURT OF ALABAMA HAS SO CONSTRUED THE STATE ACT AS TO HOLD THAT BY ITS TERMS IT IS INVALID AND INOPERATIVE IF TITLE IX OR TITLE III OF THE FEDERAL ACT IS UNCONSTITUTIONAL.

Beeland Wholesale Co. v. Jacob L. Kaufman, as Chairman, et al., No. 198 Supreme Court of Alabama (In Manuscript).

Proposition III.

TITLES III AND IX OF THE FEDERAL ACT ARE BEYOND THE ORBIT OF CONGRESSIONAL POWER; THEY ARE INVALID BECAUSE (a) THE OBVIOUS PURPOSE IS TO CONSTRAIN THE SEVERAL STATES THROUGH COERCION AND/OR PURCHASE TO ENACT UNEMPLOYMENT COMPENSATION LAWS CONFORMABLE TO THE PATTERN PRESCRIBED BY CONGRESS; AND (b) THEY CONSTITUTE AN EFFORT ON THE PART OF THE CONGRESS, THROUGH THE EXERCISE OF ITS SPENDING AND ITS TAXING POWER, TO CONTROL THE SEVERAL STATES IN MATTERS EXPRESSLY RESERVED TO THE STATES AND TO THE PEOPLE BY THE TENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

It is submitted that the face of the federal act, its legislative history, the declarations of the President in his official relation to the matter, and the unconditional admission of the administrative agency in enforcing it, proclaim that the intent of the act is *unemployment insurance* and that it is impossible to reach the conclusion that its *purpose* was to raise revenue. Under the guise of taxation, Title IX of the federal act imposes heavy exactions upon employers and employes as the necessary means for the intended control by Congress of compulsory insurance. It seeks to prescribe for the states pol-

icies of compulsory insurance which are matters of purely internal and domestic concern to the states.

The exactions imposed by Title IX are not in fact taxes, but are called taxes for the purpose of enabling the Congress under the pretense of levying a tax to exert a power not granted to Congress by the Constitution of the United States, but reserved by the 10th Amendment to the states.

> "Congress cannot, under the pretext of executing delegated power, pass laws for the accomplishment of objects not entrusted to the Federal Government."
>
> *Linder vs. U. S.*, 268 U. S. 5; 69 L. Ed. 819.
> *U. S. vs. Butler*, 297 U. S. 1.

Appellees contend that because tax revenue is ostensibly provided by Title IX, all other purposes, however dominant and beyond congressional power, must be ignored and the tax must be sustained. We insist that beginning with McCulloch vs. Maryland, 4th Wheat 316 and ending with United States vs. Butler, 297, U. S. 1, and Carter vs. Carter Coal Company 298 U. S. 238, the established principle is that the dominant purpose of a legislative act, where plainly discernible from the face of the statute, its true legislative history and its direct and necessary effect, is the controlling test of the validity of the act.

The questions that this Court must determine in order to pass upon the validity of the federal act are whether Title IX of the federal act is a tax measure and whether Title III of the same act is merely an appropriation measure, or whether the two titles are but complementary parts of a regulatory statute, the purpose of which is to control matters not delegated to the federal government but which have, by the 10th Amend-

ment to the Constitution of the United States, been reserved to the states and to the people.

It will be conceded that the Congress, acting within its proper sphere, may impose heavy and burdensome taxes which, in fact, may result in the regulation of the subject taxed. It has been so held in the following cases cited by appellant:

Veazie Bank vs. Fenno, 8 Wall (U. S) 533, 19 L. Ed. 482 (Circulation of state bank notes);
McCray vs. U. S., 195 U. S. 27, 49 L. Ed. 78 (Sale of yellow oleomargarine);
U. S. vs. Doremus, 249 U. S. 86, 63, L. Ed. 493 (Manufactuer, importation, sale or gift of narcotics).

But the power of the Congress to levy a tax which results in the regulation of the subject taxed is limited to those cases where (a) the Congress has both the power to tax and the power to regulate the subject taxed, or (b) where the taxing act appears on its face to be solely a tax measure without specifications indicating a purpose to regulate matters of purely state concern.

In the Child Labor Tax Case, *Bailey vs. Drexel Furniture Co.*, 259 *U. S.* 20, 66 *L. Ed.* 817, *Chief Justice* Taft, in discussing the cases of *Veazie Bank vs. Fenno* (*supra*), *McCray vs. United States* (*supra*), and *United States vs. Doremus* (*supra*) made very clear this limitation of the powers of the Congress.

Referring to the *Veazie Bank* case, it was said:

> "It will be observed that the sole objection to the tax here was its excessive character. Nothing else appeared on the face of the act. It was an increase of a tax admittedly legal to a higher rate, and that was all. There were no elaborate specifications on the face of the act, as here, indicating the purpose to

regulate matters of state concern and jurisdiction through an extraction so applied as to give it the qualities of a penalty for violation of law, rather than a tax.

"It should be noted, too, that the court, speaking of the extent of the taxing power, used these cautionary words:

" 'There are, indeed, certain virtual limitations, arising from the principles of the Constitution itself. It would undoubtedly be an abuse of the power if so exercised as to impair the separate existence and independent self-government of the states or if exercised for ends inconsistent with the limited grants of power in the Constitution' " (p. 821).

Again, in referring to the *McCray case*, it was said:

"That, like the *Veazie Bank* case, was the increase of an excise tax upon a subject properly taxable, in which the taxpayers claimed that the tax had become invalid because the increase was excessive. It was a tax on oleomargarine, a substitute for butter. The tax on the white oleomargarine was one quarter of a cent a pound, and on the yellow oleomargarine was first 2 cents and was then by the act in question increased to 10 cents per pound. This court held that the discretion of Congress in the exercise of its constitutional powers to levy excise taxes could not be controlled or limited by the courts because the latter might deem the incidence of the tax oppressive or even destructive. It was the same principle as that applied in the *Veazie Bank* case. This was that Congress, in selecting its subjects for taxation, might impose the burden where and as it would, and that a motive disclosed in its selection to discourage sale or manufacture of an article by a higher tax than on some other did not invalidate the tax. In neither of these cases did the law objected to show on its face, as does the law before us, the detailed specifications of a regulation of a

state concern and business with a heavy exaction to promote the efficacy of such regulation" (p. 821).

And again, in commenting upon the *Doremus* case, it was said:

> "The provisions for subjecting the sale and distribution of the drugs to official supervision and inspection were held to have a reasonable relation to the enforcement of the tax, and were therefore held valid.
>
> "The court said that the act could not be declared invalid just because another motive than taxation, not shown on the face of the act, might have contributed to its passage. This case does not militate against the conclusion we have reached in respect to the law now before us. The court, there, made manifest its view that the provisions of the so-called taxing act must be naturally and reasonably adapted to the collection of the tax, and not solely to the achievement of some other purpose plainly within state power" (p. 822).

In holding the Child Labor Tax Act unconstitutional, this Court not only made the observations just above quoted but pointed out where the line limiting the power of the Congress to regulate through taxation must necessarily be drawn, and said:

> "Out of a proper respect for the acts of a coordinate branch of the government, this court has gone far to sustain taxing acts as such, even though there has been ground for suspecting, from the weight of the tax, it was intended to destroy its subject. But in the act before us, the presumption of validity cannot prevail, because the proof of the contrary is found on the very face of its provisions." (p. 819).

The case involving the Future Trading Act, *Hill vs. Wallace*, 259 U. S. 44, 66 L.Ed. 822, and the Bituminous Coal Conservation case (Guffey Coal Act Case) *Carter vs. Carter Coal Co.*, 298 *U. S.* 238, still further reinforce the reasoning in the Child Labor case.

In the Agricultural Adjustment Act case, *United States vs. Butler*, 297 *U. S.* 1, in speaking of the purported excise tax there involved, this Court said:

> "The tax can only be sustained by ignoring the avowed purpose and operation of the act, and holding it a measure merely laying an excise upon processors to raise revenue *for the support of the government*. Beyond cavil the sole object of the legislation is to restore the purchasing power of agricultural products to a parity with that prevailing in an earlier day. * * *
>
> "The tax plays an indispensable part in the plan of regulation * * *. The tax is to cease when rental or benefit payments cease. * * *
>
> "The statute not only avows an aim foreign to the procurement of revenue for the support of government, but by its operation shows the exaction laid upon processors to be the necessary means for the intended control of agricultural production."

Again, this Court, in answer to the contention that the exaction from processors was a tax said:

> "It is inaccurate and misleading to speak of the exaction from processors prescribed by the challenged act as a tax, or to say that as a tax it is subject to no infirmity. A tax, in the general understanding of the term, and as used in the Constitution, signifies *an exaction for the support of the Government. The word has never been thought to connote the expropriation of money from one group for the benefit of another.* We may concede that the latter sort of imposition is constitutional when

imposed to effectuate regulation of a matter in which both groups are interested and in respect of which there is a power of legislative regulation. But manifestly no justification for it can be found unless as an integral part of such regulation. The exaction cannot be wrested out of its setting, denominated an excise for raising revenue and legalized by ignoring its purpose as a mere instrumentality for bringing about a desired end. *To do this would be to shut our eyes to what all others than we can see and understand.* Child Labor Tax Case (Bailey v. Drexel Furniture Co.), 259 U. S. 20, 37, 66 L.Ed. 817, 819, 42 S. Ct. 449, 21 A. L. R. 1432."

"We conclude that the act is one regulating agricultural production; that the tax is a mere incident of such regulation, and that the respondents have standing to challenge the legality of the exaction" (pp. 292-293).

Section 902 of the Federal Act provides:

"The taxpayer may credit against the tax imposed by Section 901 the amount of contributions, with respect to employment during the taxable year, paid by him * * * into an unemployment fund under a State law. The total credit allowed to a taxpayer under this section for all contributions paid into unemployment funds * * * shall not exceed 90 per centum of the tax against which it is credited, and credit shall be allowed only for contributions made under the laws of states certified for the taxable year as provided in Section 903."

We cannot shut our eyes to the fact that the money received by the federal government under the tax imposed by the federal act is not in truth a tax. First, because *it is not* to be used for the purpose of supporting the federal government, and, second, because the whole structure and plan of the federal act, with its multitude of

elaborate rules and regulations, makes it so evident that "he who runs may read" that the act is designed primarily for the purpose of forcing states through coercion or purchase to adopt unemployment compensation laws which will, in effect, permit the regulation by the federal government of matters which are purely of state concern.

Section 201 of Title III of the federal act makes an appropriation of $49,000,000 for the purpose of "assisting the states in the administration of their unemployment compensation laws". The fact that this appropriation is made solely for the purpose of coercing or purchasing the states to enact and under federal control administer such laws is disclosed by the fact that under section 302 (a) the appropriations made by section 301 are not available to the states unless the state laws have been approved by the Board as fully complying with the detailed regulations prescribed by Title IX and contain in addition to such detailed regulation provisions for the administration of such laws in the manner prescribed by section 303 (a) and such provisions must be certified by said board as including provisions which in the opinion of the board are found to be reasonably calculated to insure full payment of unemployment compensation when due and as defined and provided in Title IX. Such state laws must, in order to be entitled to certification by said board, provide for the payment of said compensation solely through public employment offices *or such other agencies as the board may approve*. They must provide for an opportunity for fair hearing before an impartial tribunal (as an impartial tribunal is not defined, it must also be one that the board approves). Such state laws must provide for the payment of all money received by the states from taxes levied pursuant to such state laws immediately upon receipt to the Secre-

tary of the Treasury to the credit of the Unemployment Trust Fund. Such state laws must further provide for the expenditure of all money requisitioned by a state agency from such Unemployment Trust Fund in the payment of unemployment compensation exclusive of expenses of administration, thereby leaving the state agencies dependent solely upon federal appropriations for the expense of administering state laws. Such state laws must further provide for the making of reports in such form and containing such information as said board may from time to time require and such state laws must further make available upon request to any agency of the United States charged with the administration of public works or assistance, the name, address, occupation and employment status of each recipient of unemployment compensation.[1]

In addition to making state administrative bodies solely dependent upon the Federal Government for their compensation and expenses under the appropriations provided in Title III of the federal act, Title IX provides that as against the taxes therein levied upon employers the taxpayers may secure credit for all contributions paid under state laws up to 90 per cent of the federal tax. The condition upon which this credit is allowed is that the state laws follow in detail the regulations provided in Titles III and IX of the federal act and that upon such conformity the Board shall certify that the state laws fully comply with the requirements of the federal act. Under Title III grants of federal funds to the several states are based upon:

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[1]The first reports called for by the Alabama Commission, copies of which are attached as Exhibits E, E1 to E10 inclusive (R. pages 59 to 154 inclusive) are prophetic of the annoyance and expense that employers may expect to be subjected to. These first reports are required by the commission not only from employers subject to the act, but from every employer in the state "having in his employment one or more" (Exhibit E, R. 59).

(1) The population of the state.

(2) The estimated number of persons in the state covered by the state unemployment compensation laws.

(3) *Such other factors as the board finds relevant.*

It is therefore evident that the Congress has attempted to use *both the spending power and the taxing power to coerce or purchase the several states into enacting state laws providing for the payment of unemployment compensation according to the pattern prescribed by the federal act.* In order for this Court to approve the federal act as the legitimate exercise of two separate powers, to wit, the spending power and the taxing power of the Federal Government, it is necessary for this Court to close its eyes and shut its mind not only to the detailed regulation prescribed by the federal act but also to pretend ignorance of that which all others know and understand; the real purpose of the federal act was and is to establish a federally controlled system of state unemployment compensation laws. As was said by Mr. Justice Roberts in the case of *United States v. Butler, supra,* with reference to the processing tax levied by the Agricultural Adjustment Act,

> "The exaction cannot be wrested out of its setting, denominated an excise for raising revenue and legalized by ignoring its purpose as a mere instrumentality for bringing about a desired end. To do this would be to shut our eyes to what all others than we can see and understand. Child Labor Tax Case (*Bailey v. Drexel Furniture Co.*, 259 U. S. 20, 66 L. Ed. 817)."

Where a purported tax statute carries with it a detailed regulation of a subject pertaining to which the tax is levied, the tax is not a true tax but a regulatory statute.

Hill v. Wallace, 259 U. S. 44, 66 L. Ed. 822;
Bailey v. Drexel Furniture Co., 259 U. S. 20, 66 L. Ed. 817;
Carter v. Carter Coal Co., 80 L. Ed. (Adv. Opin.) 749.

The tax and fine in *Constantine's Case*, 296 U. S. 287, was held to be invalidly imposed as an effort to add process to the enforcement of state laws, yet it was in the form of tax that went into the general treasury. It is not the use made of the tax itself, as in the case of *United States vs. Butler, supra*, but the device of tax plus credit which condemned the tax in the Guffey Act Case and in Constantine's case. As to the invalidity of Section 3 of the Guffey Act, covering the tax and credit, the Chief Justice affirmatively agreed with the majority, and there was no dissent upon that point. The lower court had rejected the tax and credit provisions as invalid, but upheld the remainder of the act, and the Justices who dissented from annulment of the price provisions because inseparable were for affirmance of the lower court's annulment of the tax section. On that vital point the conclusion of the Justices was unanimous.

The Municipal Bankruptcy Act, voided in *Ashton vs. Cameron County Water Improvement District No.* 1, 298 U. S. 513, 80 L. Ed. 1309, May 25, 1936, is an illuminating decision in its assertion that the state may not destroy the division between states and federal responsibility even by consent, a pregnant circumstance in view of the abject subservience of the state act to the federal requirements.

See also Knickerbocker Ice Co. vs Stewart, 253 U. S., 149.

In the Child Labor Tax Case, *Bailey v. Drexel Furniture Company, supra*, this Court said:

> "Grant the validity of this law, and all that Congress would need to do hereafter, in seeking to take over to its control any one of the great number of subjects of public interest, jurisdiction of which the states have never parted with, and which are reserved to them by the Tenth Amendment, would be to enact a detailed measure of complete regulation of the subject, and enforce it by a so-called tax upon departures from it. To give such magic to the word 'tax' would be to break down all constitutional limitation of the powers of Congress, and completely wipe out the sovereignty of the states."

In the Child Labor Tax Case, Congress attempted to impose a tax amounting to 10 per cent, of the net profits for the year upon any industry which permitted a child under 14 years of age to work in its factory.

In drawing an analogy between that statute and a previous statute enacted by Congress whereby it attempted to prohibit the transportation in interstate commerce of goods made at a factory in which such children were employed, and which was held to be invalid in the case of Hammer v. Dagenhart, 247 U. S. 251, 62 L. Ed. 1101, the Court said:

> "The analogy of the Dagenhart Case is clear. The congressional power over interstate commerce is, within its proper scope, just as complete and unlimited as the congressional power to tax; and the legislative motive in its exercise is just as free from judicial suspicion and inquiry. Yet when Congress threatened to stop interstate commerce in ordinary and necessary commodities, unobjectionable as subjects of transportation, and to deny the same to the people of a state in order to coerce them into compliance with Congress' regulation of state concerns, *the court said this was not in fact regulation of interstate commerce, but rather that of state concern and was invalid.* So here the so-called tax is

a penalty to coerce people of a state to act as Congress wishes them to act in respect of a matter completely the business of the state government under the Federal Constitution. This case requires, as did the Dagenhart case, the application of the principle announced by Chief Justice Marshall in McCulloch v. Maryland, 4 Wheat, 316, 423, 4 L. Ed. 579, 605, in a much quoted passage:

> 'Should Congress, in the execution of its powers adopt measures which are prohibited by the Constitution, or should Congress, under the pretext of executing its powers, pass laws for the accomplishment of objects not entrusted to the government, it would become the painful duty of this tribunal, should a case requiring such a decision come before it, to say that such an act was not the law of the land.' "

In the case of *United States v. Butler, supra,* the Court, after holding that Congress could not use the taxing power to force compliance with matters of state concern over which the Federal Government had no authority, held that such taxing power could not be used to raise money necessary to purchase a compliance which the Congress was powerless to command. The Court said:

> "An appropriation to be expended by the United States under contracts calling for a violation of a state law clearly would offend the Constitution. *Is a statute less objectionable which authorizes expenditure of federal moneys to induce action in a field in which the United States has no power to intermeddle?* The Congress cannot invade state jurisdiction to compel individual action; no more can it purchase such action. * * *
>
> "Congress has no power to enforce its commands on the farmer to the end sought by the Agricultural

> Adjustment Act. *It must follow that it may not indirectly accomplish those ends by taxing and spending to purchase compliance.* * * * If, in lieu of compulsory regulation of subjects within the states' reserved jurisdiction, which is prohibited, the Congress could invoke the taxing and spending power as a means to accomplish the same end, clause 1 of Section 8 of Article I would become the instrument for total subversion of the governmental powers reserved to the individual states."

In the case of *Carter v. Carter Coal Co., supra*, this Court held the Guffey Coal Act unconstitutional on the ground that it was an attempt on the part of Congress to regulate the mining of coal within the several states which under the Tenth Amendment was a matter reserved entirely to the states, and that the imposition of an excise tax of 15 per cent. on the sale price of the coal with a draw-back allowance of 13½ per cent. where the provision of the act were complied with, was not a legitimate exercise of the taxing power but was a penalty imposed for the purpose of compelling producers to enter into an agreement prescribed by Congress. The court said:

> "It is very clear that the 'excise tax' is not imposed for revenue but exacted as a penalty to compel compliance with the regulatory provisions of the Act. The whole purpose of the exaction is to coerce what is called an agreement—which of course, it is not, for it lacks the essential element of consent. One who does a thing in order to avoid a monetary penalty does not agree; he yields to compulsion precisely the same as though he did so to avoid a term in jail."

There is no difference between exerting pressure to compel compliance on the part of the individuals resid-

ing within the several states and in exerting pressure on the several states to enact laws conformable to the will of Congress.

Appellants suggest that the federal act can be rescued from the scope of the cases cited above and many similar decision upon the ground that the Congress cannot coerce or purchase individual action and upon the further ground that there is no contract here involved. Appellants further contend that this court should not perceive that the moneys raised by the federal act are for the purposes of that act, and also that under the doctrine of the cases of *Florida vs. Mellon*, 273 U. S. 12, *Massachusetts vs. Mellon*, 262 U. S. 447, a state cannot challenge congressional coercion or purchase in a field forbidden the Congress.

Each of these contentions is answered in the very language of the case of *United States vs. Butler*. The holding of this case is not that Congress is forbidden to coerce or purchase action from an individual within a field inhibited to Congress, but that it is forbidden to coerce or purchase such action from any one. There is no limitation of the doctrine of coercion or of purchase from individuals. The holding is summed up with absolute precision in head-note 19:

> "The taxing power may not be employed to raise money to purchase or to enforce by economic pressure a compliance with a congressional regulation of a matter with respect to which Congress has no authority."

Surely an argument carries its own refutation when it asserts that the Congress may not coerce or purchase submission from an individual, who of course has no sovereignty, but may coerce or purchase from a state, thereby not only invading a field outside the congres-

sional orbit, but derogating the sovereignty of the state itself.

The argument that the Congress may purchase or coerce so long as there is no contract is equally in the teeth of the decision and the principle upon which it rests. What is forbidden is purchase or coercion; not merely purchase or coercion accomplished through the instrumentality of a contract. It makes no difference what the instrumentality, the purchase or coercion is absolutely forbidden. Even if the principle were limited to purchase or coercion accomplished through contract, defendant would stand on no better ground. Appellants contention overlooks the elementary principle that an offer to pay a sum of money provided another person does a certain act ripens into a contract when the act is done.

The contention that the court must shut its eyes to the fact that the moneys raised by the federal act will necessarily be used for the purposes of the act is of course utterly defective. Here is an act which raises forty-seven billion dollars and provides certain old-age and unemployment benefits amounting to forty-seven billion dollars. The money is raised from payrolls and the states which are made the disbursing agents are required under the credit device to levy the exactions upon payrolls—the employer being forbidded to reimburse himself by decrease in wages. The only moneys disbursed are those raised from payrolls and the only moneys raised by the federal act are those exacted from payrolls. The court judicially knows that all general revenues of the United States are requisitioned and overrequisitioned for the general support of the government. The court judicially knows that without the revenues provided by the federal act the payment of the behefits therein ordained would be utterly impossible. It

is not a question of some power, technical or otherwise, to use the revenues provided in the federal act for purposes other than those of the act. The revenues raised by this act are *indispensable* to the carrying out of the act. Being a necessary step in the illegal scheme of purchasing and/or coercing submission in a forbidden field, the tax is as illegal as the appropriation which carries out the scheme. The holding of the case of *United States vs. Butler, supra,* is thus summarized in head-note 18:

> "While the power of taxation may be adopted as the means to carry into operation another power also expressly granted, *resort to the taxing power, to effectuate an end which is not within the scope of the Constitution is inadmissible.*"

The fact that in the federal act the tax is set forth under a separate title from the appropriation is of course of no moment. In the case of *United States vs. Butler, supra,* the court indicates its view of such contention by using the language "passing the *novel* suggestion that two statutes enacted as parts of a single scheme should be tested as if they were distinct and unrelated."

Surely no one would be naive enough to suppose that the draftsmen of the Agricultural Adjustment Act could have saved it from unconstitutionality by the expedient of numbering paragraphs separately.

The Mellon cases are of course in no way in point. In the Florida case the Congress simply provided in substance that where a state taxed inheritances the Congress would not duplicate this tax. Had the act of the Congress provided that, in order to obtain the credit, a state must adopt a rule of descents and distributions prescribed by the Congress, the act of course would have been clearly unconstitutional under the principles of the case of *United States vs. Butler.*

In the Florida case the court merely held that the state had no justiciable cause of action. It was not urged that the credit had coercive effect upon Florida, nor had been adopted by the federal government for any such objective, nor was in fact proximately related to that end. The court held that the probable withdrawal of citizens from Florida was speculative and remote. Moreover, since the federal inheritance tax was a tax levied unmistakably for general treasury purposes, it is obvious that the right to levy such tax took precedence over any conflicting policy of the state, and the court so held.

It may be difficult at times to determine whether a tax or a credit is levied to effect and with the direct proximate result of effecting an unconstitutional purpose, as in the Child Labor Tax Case, or is levied apparently or at least ostensibly for revenue as in the McCray and Doremus cases. The court has divided in the past and will divide in the future as to this test.

It is sufficient here to assert that the inheritance tax has been employed traditionally as a source of revenue, produced substantial revenue both for states and nation and that the credit was in fact urged by the states in an increasing bona fide desire to avoid onerous duplicate taxation on the same items, transactions or property: a desire in which this Court has evidenced an aroused and constructive interest.[1]

The difference between that honest comity and the "device" of a tax upon payrolls for the purpose of establishing a uniform system of federal controlled state compensation insurance, accompanied by credit to force states to adopt a federal "certified" system of compensation, is obvious.

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[1] Farmers Loan and Trust Co. vs. Minnesota, 280 U. S. 204, overruling the constructive situs case of Blackstone vs. Miller, 188 U. S. 189.

In the Massachusetts-Frothingham cases, supra, the decisions dealt *solely* with remedy. Says the court:

> "We have reached the conclusion that the cases must be disposed of for want of jurisdiction, without considering the merits of the constitutional questions."

In pursuance of this conclusion, the court then pointed out that an individual litigant not taxed by the act in question could not raise the issue of the power of Congress to tax and appropriate because the interest of the individual in the moneys of the treasury was minute and indeterminable. The court then held that the state was equally without standing to invoke court action, no matter how unconstitutional might be the act of Congress.

It might be observed also that in the Massachusetts-Frothingham cases the amount was not—as it was in the processing tax and social security statutes—sufficient to exert any pressure. Massachusetts' share of the entire appropriation involved in the Mellon case was only a few thousand dollars a year.

INTERFERENCE WITH EMPLOYEE RELATIONSHIP

Sections 303(a), 903(5) of the federal act when placed side by side with sections 10(g), (i), 4(d), 6 of the state act demonstrate beyond question federal interference with the local activity of employer-employe relationship.

As a matter of fact, attempting under federal law to require an employer to pay to his employe while unemployed a fixed sum, is essentially a compulsory wage contract. To say that a local manufacturer must pay his unemployed workmen a minimum wage or pension

while not at work, is not in any sense different in its principle from saying that he must pay him a minimum wage while at work. Both fall within the interdiction of the Constitution which prohibits the federal government from taking charge of the domestic and internal affairs of the state. Moreover, neither the federal nor the state government can require an employer to pay prescribed wages. This is an invasion of liberty of contract and repugnant to the due-process clause of the Fifth and Fourteenth Amendments.

In *Morehead v. Tipaldo*, 80 Law. Ed. (Adv. O.) 921, reaffirming the doctrine of *Atkins v. Children's Hospital*, 261 U. S. 525, the Supreme Court held that it was beyond the power of a state to require the payment of a minimum wage. The holding is succinctly stated in the headnote as follows:

> "A statute which provides for the fixing of minimum wage rates for adult women employes is repugnant to the constitutional requirement of due process of law."

Says the Court in the opinion:

> "It amounts to a compulsory exaction for the support of a partially indigent person for whose condition there rests upon the employer no peculiar responsibility. * * *
>
> "The ethical right of every worker, man or woman, to have a living wage may be conceded. The fallacy of the proposed methods of attaing it is that it assumes that every employer is bound at all events to furnish it.".

In the present instance what have we in the ultimate analysis but a compulsory exaction against the employer of labor to provide wages for employes while idle? If neither the state nor the general government can require

the payment of stipulated wages to employes while they are working, a fortiori, neither state nor national government can require the payment of such wages to a workman while unemployed.

The federal act, when analyzed, takes over the regulation of industry in a manner and to an extent that has never before been attempted in the history of our country. Among other things it:

(a) Imposes a tax upon employers only.

(b) Forces into the state act its "must provisions" over employe relationships.

(c) Regulates the amount that the employe is to receive under his contracts for wages by compelling the employer to make a deduction from the employe's pay.

(d) Compels the employer to keep a thumbnail-fingerprint record of all his employes and make the same public, not only to the Board, but to other federal agencies.

(e) Requires the keeping of voluminous records by the employer in reference to his employes and the making of various reports to the Commission and to his own employes.

(f) Imposes a compulsory compensation insurance plan on all employes.

(g) Regiments industry upon a scale never before attempted by imposing upon employers and non-union employes the closed shop, and collective bargaining, as defined by the various boards acting under the discredited and deceased NRA and Guffey Acts.

(h) Enters into the insurance business on the largest scale ever attempted in the world's history. (While the insurance business may be regulated because affected with a public interest even this power of regulation exists in the state and not in the national government. *Northwestern National Life Insurance Company v. Paul Riggs*, 203 U. S. 243).

The paramount purpose of the federal act to control the states in matters of purely local concern is abundantly illustrated by its title. It states that it is:

> "An Act, To provide for the general welfare by establishing a system of Federal old-age benefits, and by enabling the several States to make more adequate provision for aged persons, blind persons, dependent and crippled children, maternal and child welfare, public health and the administration of their unemployment compensation laws; to establish a Social Security Board; to raise revenue; and for other purposes."

Every subject matter involved in this definition relates to matters within the exclusive field of state regulation. Since time immemorial the states have been accustomed to regulating matters relating to industrial relief, to provide against indigency and to control relief agencies. Statutes of every state now contain, and have at all times contained, laws relating to these subjects, which have never been disputed or questioned as being improper or without the sphere of state legislation. It is for the state to determine, free of National compulsion, the manner and means of controlling these local affairs. This right is clearly expressed in the following quotation from the case of *House v. Mayes,* 219 U. S. 281:

> "* * * that while the Constitution of the United States and the laws enacted in pursuance thereof, together with any treaties made under the authority of the United States, constitute the supreme law of the land, a State of the Union may exercise all such governmental authority as is consistent with its own Constitution, and not in conflict with the Federal Constitution; that such a power in the State, generally referred to as its police power, is not granted or derived from the Federal Constitution, but ex-

ists independently of it, by reason of its never having been surrendered by the State to the general government; that among the powers of the State, not surrendered,—which power therefore remains with the State,—is the power to so regulate the relative rights and duties of all within its jurisdiction as to guard *the public morals, the public safety,* and *the public health,* as well as to promote the public convenience and the common good; and that it is with the State to devise the means to be employed to such ends, taking care always that the means devised do not go beyond the necessities of the case, have some real or substantial relation to the objects to be accomplished, and are not inconsistent with its own Constitution or the Constitution of the United States. The cases which sanction these principles are numerous, are well known to the profession, and need not be here cited."

In view of the decisions of the Supreme Court cited herein, it is unnecessary to cite the many other federal decisions holding that the objects sought to be regulated by the federal act are all within the exclusive field of the State Legislature and that Congress cannot trespass thereon on the specious theory that state relief, state unemployment, state social assistance, state employe relationship, affect the Nation's welfare. **It cannot be successfully asserted that regulation of these matters has ever been sustained as being within the field of congressional power.**

Coercion and Purchase of State Submission Not Only an Object of the Statute But the Sole Object.

The inevitable intent and the inevitable effect of this statute is to institute a system of governmentally insured idleness pensions throughout the United States. The taxing power of Congress is exerted to that sole end. *Federal* general welfare is not involved. The fact that

Congress adopted the circuitous device of state action, bought with federal funds, is an absolute admission of this.

The heart and purpose of the act is admittedly social, to break the distress of unemployment, to sustain purchasing power during unemployment periods. We venture the assertion that no one would have the audacity to state that its purpose is to benefit employers rather than the general public.

While in this case this court has been relieved of the difficulty of determining the dominant purposes of the federal act, by the unanimous and repeated declarations of the legislative and executive agencies concerned in its enactment, and of the federal authorities currently interpreting and administering it, there are mechanical tests which further relieve the Court of any alternative conclusion.

Thus, if no state should have established or should establish an agency to administer the scheme and all employers everywhere should, accordingly, pay the tax, is it not obvious that, notwithstanding the very substantial revenue involved, the whole purpose of Titles III and IX would be defeated?

In short, the proclaimed objective of the statute would succeed only to the extent a credit against the federal tax is obtained. A scheme which succeeds only as revenue is not derived cannot honestly be characterized as a general revenue measure.

Again, as recording the local and non-national characteristics of the scheme, is it not obvious that the tax to be paid by the employers, in those states which have not established an agency for the congressional purpose of unemployment compensation, in no sense of the word supplements the national purpose for a compensation system? Funds paid into the federal treasury from Ohio

constitute in no respect a national equivalent of a federal-state unemployment compensation scheme in Alabama. Hence the alternate basis of the tax and credit, i.e., tax or a local system of unemployment compensation, is on its face preposterously inconsistent as a revenue measure. The credit alternative has no relation to any principle of federal revenue. The decision of the court in the *Linder Case* is conclusive here. The court had sustained, with grave hesitation, subsequently reasserted, the narcotic tax as a revenue measure. The legislative footprints and fingerprints and plain indicia of regulation were lacking. But Congress later on (40 Stat. 1057, 1130) added a regulation which had no rational relation to the discovery or collection of revenue and was obviously intended as a regulation of the use of opiates. This could not be sustained. Having sustained the act as originally enacted solely on the basis of revenue, the added provision looking to regulation could not be sustained. Had the purely regulatory aspects been incorporated in the original act, the act would not have been upheld. *Linder vs. United States*, 268 U. S. 5, is of vital bearing here. So, in Title IX we have the flagrant repudiation of an intent to produce revenue by the allowance of the credit both for taxes paid into a state agency of regulation as well as for good conduct unaccompanied by any payment of taxes (Section 909 of Title IX).

Section 909 of Title IX is, of itself alone, a complete and unanswerable acknowledgment that taxation is not the objective of the act, in that it provides for a credit against the federal tax based upon "good conduct" of an employer under the state unit of the "federal-state system". That provision, like the narcotic regulation in *Linder vs. United States*, has no rational place in a sys-

tem of taxation. It is appropriate to an unemployment insurance system.

We cannot better express the contention that we are now making than to give a summary of the statements made by Mr. James A. Emery, attorney of the National Association of Manufacturers before the House Committee on Ways and Means when the Federal Act was under consideration.

Mr. Emery felt that upon a serious examination it would be found that the proposed tax is not a tax at all; it does not give a legal basis for a tax, and that there are very serious objections to an exercise of congressional power of this character for this purpose. (Hearing before Committee on Ways and Means of the House on H. R. 4120, pp. 1020.)

Mr. Emery discussed the case of *United States vs. One Ford Coupe Automobile*, 272 U. S. 321 (71 L. Ed. 279), quoting from the court's opinion that the use of the word "tax" did not prove conclusively that the burden imposed is a tax. Such is a matter for judicial determination after the legislature has exercised its discretion. He referred to the *Child Labor Tax Case*, 259 U. S. 20 (66 L. Ed. 817), and *Stafford vs. Wallace*, 258 U. S. 495 (66 L. Ed. 735), and *Hill vs. Wallace*, 259 U. S. 44 (66 L. Ed. 822), as authority for the principle that so-called taxes were not in fact taxes. He distinguished the case of *Florida vs. Mellon*, 273 U. S. 12 (71 L. Ed. 511), in which the court pointed out that:

> "a tax is the compulsory taking of the private property of the citizen for the purpose of the support of the sovereignty or government which levied the tax. That is the test of what constitutes a tax." (Ib. p. 1025)

He said, the difference between the estate tax and the pay roll tax is that in the first instance the credit is not de-

pendent on the adoption by the state of a policy proposed by Congress; in the second place, unless the state puts into effect the unemployment plan with its standards fixed by Congress, the taxpayer receives no credit for the state tax. Congress did not enact the estate tax for the purpose of endeavoring to persuade the states to enact a like tax. Only three states in the Union lacked such a tax (Ib. p. 1026). If by the use of the taxing power an attempt is made to impose a penalty or to compel an independent sovereign or individual to pursue a certain line of conduct, if what is done is the endeavor to exercise a forbidden power under the color of a permissive power, the exercise of the latter cannot be sustained. If the federal tax is intended not to raise revenue but to control the local conditions of production, the tax is invalid. *The purpose of the tax is not to raise revenue for the federal government; for if it were successful in raising revenue the bill would be a failure.* The proposed statute therefore, as it is worded, defeats its own purpose.

> "It would be, in this instance, you gentlemen will clearly admit, a complete failure if it succeeded in raising revenue which the federal government retained, instead of raising revenue which the state recaptured if it conformed to the requirements imposed by the federal government, carrying out the will of Congress, as laid down in legislation. Therefore, I say it is a regulatory statute." (Ib.)

An examination of the legislation piece by piece is convincing that it is upon its face pointed to one result:

> "to secure state legislation upon a subject on which the states have not legislated and which under the tenth amendment is not only under their control but which they are free to accept or reject." (Ib. p. 1027)

And it is here proposed that unless the states act, a tax will be levied upon their citizens which the states cannot recover and which will lessen their taxing power.

> "So, paradoxical as it may seem, the success of this bill depends upon its failure to produce revenue for the federal government." (Ib.)

Mr. Emery, in answer to questions from the committee, stated that in the instance of the estate tax the taxpayer could secure his credit as a result of his own act, while under the present bill no act of the employer could recover his credit, such being dependent entirely upon the act of the state of which he is a citizen (Ib. p. 1027). While the tax (or 10 per cent thereof, dependent on the action of the states) goes into the federal treasury subject to appropriation for any purpose, the major purpose of the bill according to its title is "a bill to alleviate the hazards of old age, unemployment, illness, and dependency, to establish a social insurance board in the Department of Labor, to raise revenue, and for other purposes", while the minor purpose is revenue (Ib. p. 1030).

Had the committee heeded the warnings of Mr. Emery, of Mr. Green, Senator Hastings and others this unconstitutional statute would not have been enacted. We submit the authorities previously cited flatly hold that general welfare means federal welfare, and that similarity of conditions throughout the United States or desirability of uniform action does not present a situation of general welfare within the purview of the federal constitution, but that those matters must be dealt with solely by the states, and Congress cannot constrain the manner of such dealing either by coercion or by purchase, or by a combination of the two.

The language of the opinion in *U. S. v. Butler, supra,*

might well have been penned for the record presented by this case. Says the court:

> "The Government asserts that whatever might be said against the validity of the plan, if compulsory, it is constitutionally sound because the end is accomplished by voluntary co-operation. There are two sufficient answers to the contention. The regulation is not in fact voluntary. The farmer, of course, may refuse to comply, but the price of such refusal is the loss of benefits. The amount offered is intended to be sufficient to exert pressure on him to agree to the proposed regulation."

So here co-operation on the part of the states is not voluntary. In the Agricultural Adjustment Act case the benefits were payments to the farmers for the adoption of a system of crop curtailment. In the instant case the benefits are gigantic sums of money paid for the adoption of a pension system.

The court says:

> "The power to confer or withhold unlimited benefits is the power to coerce or destroy."

So here the power to withhold from the states the 90 per cent credit (which, when supplemented with the contribution by the federal government of administrative expenses, becomes really 100 per cent) is the power to coerce irresistibly. Congress says to Alabama:

> "Keep your own present method of dealing with employment and unemployment and you forfeit ten million dollars a year."

This is not only coercion but coercion on a colossal scale.

The opinion continues:

> "But if the plan were one for purely voluntary co-operation it would stand no better so far as federal power is concerned. At best it is a scheme for purchasing with federal funds submission to federal regulation of a subject reserved to the states."

If, therefore, it were conceded that Congress is not coercing the states to enact the Congressional plan of regulation, it is purchasing such enactment from them and the statute falls for this reason.

The contention of the defenders of the legislation that the tax imposed by Congress to raise these huge sums is a separate matter from the attempted regulation of state policy is answered by the opinion in these words:

> "The statute * * * by its operation shows the exaction laid upon processors to be the means for the intended control of agricultural production."

As was said in the Child Labor Case, if the Congress may, by indirection, exert control over one feature of internal state policy there is no such feature which is free from Congressional shaping. If the federal act is valid, then through precisely the same machinery, the Congress may take control of every field of state policy where a fiscal program is involved. May we illustrate with a few examples:

If the Congress desired to have every state institute a system of governmentally insured workmen's compensation for industrial accidents it need only enact a statute similar to this one, levying a tax sufficient to pay the compensation accruing to workmen accidentally injured, and providing that those states which adopt such a system will receive the money back through a 90 per cent drawback or credit on the federal tax, whereupon the state is to disburse the money as workmen's compensation benefits.

If it is desired to procure from each state the enactment of laws prohibiting the sale of intoxicants, Congress could calculate the amount of liquor taxes which would be lost by the states, levy a national tax of that amount, and offer the states as a drawback the equivalent credit provided they enacted state-wide prohibition laws.

If Congress desired to shape the educational system of the states it could levy a tax equal to the revenues necessary to maintain the schools and offer the appropriate drawback provided the states agree to eliminate parochial schools or agree that the Darwinian theory shall not be taught in any of the schools, or agree that all teachers should or should not be required to join a union.

Illustrations might be multiplied indefinitely. It is submitted that if Congress can exert its taxing power to install unemployment pensions in each state, it can equally exert its taxing power to occupy every field of local domestic concern.

THE FINAL AND CONCLUSIVE ANSWER TO THE CONTENTION OF APPELLANTS IS THAT EVEN IF THERE WERE NO COERCION OR PURCHASE OR PARTY TO COMPLAIN OF THE APPROPRIATION, THE CONGRESS COULD NOT LEVY THIS TAX UNDER THE GENERAL WELFARE CLAUSE.

Even if we did not have here present the element of an attempt to coerce and/or purchase submission to federal regulation outside the orbit of permissible congressional action, the federal act would still fall because not within the authorization of the general welfare clause.

It is a recognized and historically established fact that no body of men were ever more meticulously careful in

their choice of words than were the framers of the Constitution of the United States. The tremendous difference between "The United States of America", and "the inhabitants of the states", was recognized by them in its fullest import. Had they meant to enact a clause conferring upon the Congress power to tax for the benefit of inhabitants or groups of inhabitants of the states, it is, we submit, beyond contestation that they would have used such language instead of employing language which is apt only to designate the political sovereignty they were creating, and which, throughout all other parts of the Constitution, they used solely for the purpose of designating the political corporation they were creating.

It has never been contended even by as ardent latitudinarianists as the Hamiltonians that this clause authorizes Congress to raise money for any and all purposes which may in any way benefit any inhabitants or group of inhabitants of the United States. It is the general welfare of the United States which is involved; and this by all the authorities means general not local, national not state, purpose and benefit.

The fundamental constitutional principle that the power of federal taxation and appropriation may not be exercised for state as distinguished from national purposes has been repeatedly stated by the highest authority. In *Gibbons vs. Ogden*, 22 U. S. (9 Wheat.) 1 (1824), Chief Justice Marshall said at page 199:

> *"Congress is not empowered to tax for those purposes which are within the exclusive province of the states."*

In the Passenger cases, 48 U. S. (7 How.) 283 (1849) at page 446 Mr. Justice Catron said:

> "Nor has Congress power to lay taxes to pay the debts of a state, nor to provide by taxation for its

general welfare. Congress may tax for the treasury of the Union, and here its power ends."

If Congress has no power to lay taxes to pay the debts of a state after they are contracted, it equally follows that Congress has no power to lay taxes to enable the state to perform state functions by paying cash instead of creating debts.

Judge Cooley at page 108 of *Cooley on Taxation* says:

> *"State expenses are not to be provided for by federal taxation."*

Justice Samuel F. Miller says at page 247 of his *Lectures on the Constitution*:

> "The United States being a limited form of government, one of the restrictions to which it is subject is in regard to its power to levy taxes. The states may levy them for *a great many purposes for which Congress cannot,* because to the states belong all the powers not delegated to Congress."
>
> "Congress may levy and collect taxes for *legitimate purposes of the national government, but not for the purposes of state governments."*
>
> *Cloud, etc. vs. Coleman, etc.*, 64 Ky. 548, 588 (1866)

Moreover, the public purpose which will sustain a tax or appropriation must *be a public purpose of or from the standpoint of the taxing government.* That it may be a public purpose of or for another government is insufficient; and what may be a public purpose for one taxing government may not be a public purpose for another taxing government. *Cooley on Taxation* 108; *Hubbard vs. Fitzsimmons,* 57 Ohio State, 436; *State ex rel Owen, Attorney General vs. Donald,* 160 Wis. 21, 151 N.W. 365.

To constitute a public purpose of the federal government, therefore, it is necessary that the purpose be a national public purpose and it is not sufficient that the purpose may be a public purpose from the standpoint of a state or a municipality. *Kohl vs. United States*, 91 U. S. 367.

It should be noted that the language of the welfare clause itself very carefully limited the taxing power by stating its purpose to be "to pay the debts and provide for the common defense and general welfare *of the United States.*"

Of course the court will note the very significant import of the words "of the United States" in this clause, as meaning, not the states which compose the United States, nor the people who inhabit the United States, but the entity erected by the Constitution—namely, the government thereby established, and which we mean when we speak of the President of the United States, the Congress of the United States, and the courts of the United States.

The meaning of the general welfare clause under the Hamiltonian theory, as expounded by Mr. Justice Story, is that it does not embrace all things whatsoever under the power of raising and expending taxes, but only those which come within the term "of the United States" as a sovereign government. Mr. Justice Story of course meant just this when he said:

> "A power to lay taxes for the common defence and general welfare of the United States is not in common sense a general power. It is limited to those objects. It cannot constitutionally transcend them." (Sec. 922)

In a lecture given by Mr. George Tichnor Curtis before the Law School of Georgetown University on Feb-

ruary 16th, 1885, he develops this idea so clearly and forcibly that we quote him at length:

> "We hear much nowadays about the so-called 'general welfare clause' of the Constitution. The Constitution uses the words general welfare in just two places, and no more. In the preamble the promotion of the general welfare is one of the objects enumerated, along with five others, for which the people of the United States ordain and establish the Constitution. The wildest and most latitudinarian constructionist would hardly venture to tell an audience of intelligent law students that the preamble of the Constitution contains any grant of power. It simply asserts the grand objects which the people aim to secure by the Constitution; but as to the means by which they do secure these desirable objects we must look into the body of the Constitution and among its enumerated powers. Looking into the body of the instrument we come upon the first clause of the 8th section of article 1 of the Constitution, which contains the grant of the taxing power. Here the words general welfare are used again; and, strange to say, there are persons who suppose that this clause contains a grant of authority to tax in order to promote the personal welfare of every man, woman and child in the United States! I shall merely counsel you to analyze the clause and see how strange this notion is. The clause grants to the Congress a power to tax the people for three special purposes: First, to pay the debts of the United States; second, to provide for the common defense of the United States; third, to provide for the general welfare of the United States. In every one of these special purposes for which the taxing power is to be exercised; 'the United States' means the political corporation known as the United States, and not the individual inhabitants of the country. The debts that are to be paid are the debts of the Government; the common defense that is to be pro-

vided for is the defense of the Government in all those matters in which it has duties of defense to discharge for the whole country; the general welfare that is to be provided for is the well being of the Government in all those matters of which it has special cognizance, and in respect to which its efficiency concerns the whole Union. * * * In the very next clause, which contains the grant of power to borrow money on the credit of the United States, the 'United States' is used in the same sense, meaning the government known as the United States. It is on the credit of the government, not on the credit of individuals or of states, that Congress is authorized to borrow money.

"Now look at the stupendous communism that is wrapped up in the taxing power, on the supposition that it includes a power to tax for the promotion of the welfare of the individuals. There is no limit to the taxing power, excepting that duties, imposts and excises must be uniform throughout the United States. All the property in the country may be taxed without limit for the legitimate objects of taxation. If one of those legitimate objects is the welfare of individuals, or masses, or classes, or of the whole people, the two Houses of Congress and any President acting together can divide up all the property in the country upon the plea that a general division will promote the general welfare. By this process this Government could devour itself, and there would be nothing left for it to subsist upon. But it happens that one of the grand purpposes for which this government was established was the protection of the property, and its Constitution contains guarantees designed for the protection of property that are more remarkable and efficient than any that exist under most of the other governments in the world. At the same time the Constitution contains guarantees of personal rights that are as strong and efficient as those afforded to the rights of property."

Followed to its logical conclusion, the contention that Congress can tax for the purpose of providing old-age, unemployment and indigent relief results in a perfect *reductio ad absurdum*. All powers possessed by the federal government under the Constitution are of course paramount since the federal government is supreme in its own sphere. "The government of the Union, though limited in its powers, is supreme within its sphere of action." *Mondou vs. New York Ry. Co.*, 223 U. S. 1, 51, *McCullough vs. Maryland* (4 Wheat.) 316; *Minnesota Rate Cases*, 230 U. S. 352, 396. "The power conferred upon the Congress is such that when exercised it excludes and supersedes state legislation." *Gilvary vs. Cuyahoga* R. Co., 292 U. S. 57, 60. Wherever Congress is empowered to occupy any field it is empowered to occupy that field to the exclusion of all state action. In such field the state can act only when Congress has failed to occupy the field or has granted the state permission to occupy as a tolerated privilege—a tenancy at the will of Congress. Therefore, if Congress has power to provide for unemployment, old-age and indigent relief, it has power to exclude any state from doing so. If it be contended that Congress has power under the welfare clause to provide such relief, this carries the absurd further contention that the only reason the states through all these years have been allowed to deal with these matters is that Congress has permitted their doing so as an act of tolerance by not asserting its right to occupy the field to the exclusion of all state action.

Proposition IV.

THE FEDERAL ACT IS INVALID BECAUSE IT CONTAINS AN ILLEGAL DELEGATION OF LEGISLATIVE AND JUDICIAL POWERS TO THE FEDERAL SOCIAL SECURITY BOARD.

Panama Refining Company vs. Ryan, et al, 293 U. S. 388;
A. L. A. Schechter Poultry Corporation vs. United States, 295 U. S. 495.

The analysis which we have previously made in this brief of the federal act demonstrates the plenary powers given the Board. From its decisions there are no appeals. Among the powers conferred upon the Board, legislative or judicial in character, and with no appropriate standard or yardstick, may be mentioned the following:

The Board is given the power to determine the amounts of appropriation of the states in the administration of their unemployment compensation laws. It not only has authority to make these appropriations contingent upon the Board's estimates of the number of persons who are to receive aid, without any policy or standard to determine how these estimates shall be arrived at, but destroys this hint of a standard by authorizing the Board to base its conclusions on *"such other factors as the Board finds relevant"*. It, therefore, appears that Alabama having in reliance on federal aid repealed all appropriations for administrative purposes will have to depend entirely on the Board's discretion which is free from any legislative guides or determinations in its exercise. It is needless to point out that while the act makes a blanket appropriation the legislative function of appropriating any money to a particular state does not take place until the Board has exercised its function of determining as to whether or not the state shall be allowed to requisition the fund.

The Board is given the power to determine whether the state unemployment law shall be approved and to determine the rates of taxes payable by employers to different states. Note that the Board must approve the law if (among other things) it provides for compensation to be paid through public unemployment offices in

the state, *or state agencies as the Board may approve.* The words emphasized wholly nullify the effect of the words immediately preceding them, and commit all control to the Board's discretion. The Board may not only determine which state laws it will approve, but it may also regulate the rates of taxes in different states by its action in approving or failing to approve the state laws. Thus, by failing to approve a state unemployment compensation law imposing a specific tax the Board has it within its power to add a penalty upon the employers of the state to the extent of the tax imposed under the state law, as well as the tax which is imposed upon all employers in states which do not have an approved federal law. Otherwise stated, the employer, at the discretion of the Board, may be compelled to pay two taxes under two laws, although the scheme of the legislation was designed to overlap and make the rate of taxes uniform throughout the country.

The Board is given the absolute power to adjust the rate of taxes. Under Section 909(a) additional credits are allowed against federal taxes to taxpayers under state laws who have complied with certain conditions set forth in Section 910. These additional allowances are permitted, however, only if the Board finds under the state law a lower rate allowed to the employer was permitted in certain circumstances. No standard or rule of conduct is set up for the purpose of ascertaining these circumstances. The Board, therefore, has an uncontrolled discretion of adjusting the rate of taxes.

The Board is given the absolute power to prescribe such methods of administration as the Board finds "to be reasonably calculated to insure full payment of unemployment compensation when due", and "to designate the agencies through whom payments of benefits must be made."

Upon the Board is conferred not only the legislative power, but the judicial power of determining when the state agency, charged with the administration of the state law, has denied "in a substantial number of cases unemployment compensation to individuals entitled thereto under such law, or has failed to comply substantially with any of the provisions of the federal law", and as to whether or not the state "has, with respect to the taxable year, failed to comply substantially with the provisions of the federal law".

Part II.

THE EXACTIONS IMPOSED ON EMPLOYERS BY SECTION 4(a), (b), (c) and (d) OF THE STATE ACT ARE IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

Proposition I.

SECTION 4(a), (b) and (c) OF THE STATE ACT IS IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES BECAUSE IT TAKES PRIVATE PROPERTY FROM ONE CLASS FOR THE USE OF ANOTHER; ITS PURPOSE IS NOT A PUBLIC PURPOSE, IN THE SENSE IN WHICH THE WORDS "PUBLIC PURPOSE" ARE USED AS JUSTIFYING THE TAKING OF PRIVATE PROPERTY WITHOUT JUST COMPENSATION.

The Supreme Court of Alabama, in the case of *Beeland Wholesale Company vs. Jacob L. Kaufman, as Chairman, et al.* No. 198, has decided that the state act is in keeping with the Alabama Constitution. While the certificate of affirmance in this case has been with-

drawn pending the consideration of appellant's application for rehearing, we do not question this decision insofar as it relates to the asserted violations by the state act of the state constitution. We insist, however, that the state act is palpably invalid under the Fourteenth Amendment to the Constitution of the United States.

As a text for our argument in support of proposition I above, we select the following statement of Mr. Justice Holmes in *Pennsylvania Coal Company v. Mahon*, 260 U. S., at p. 416:

> "In general it is not plain that a man's misfortunes or necessities will justify his shifting the damages to his neighbor's shoulders. * * * We are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change."

The state act imposes exactions upon both employers and employes. Whether these exactions are in fact taxes or contributions, they are illegal because they are not levied for a public purpose.

As was said by Mr. Justice Roberts in the case of *United States v. Butler*, 297 U. S. 1, 80 L. Ed. 287:

> "A tax, in the general understanding of the term, and as used in the constitution, signifies an exaction for the support of the government. The word has never been thought to connote the expropriation of money from one group for the benefit of another."

As the payments to unemployed persons under the state act do not depend on the destitution of the recipients, they are not for a public purpose under the recognized duty of the state and local subdivisions to care for the destitute.

The contention of the defenders of the state act is that large numbers of the population of Alabama do not enjoy permanent employment; that in times of unemployment their purchase and consumption of goods and services decline and therefore it is of public interest to have such persons provided with an income so that they may continue for a time their consumption of goods and services. As a reason for this bounty the act in effect declares the inability of the state to suddenly take care of such large numbers of unemployed and therefore it proposes to have employers and employes contribute to a fund from which such benefits may be paid.

If we concede, which we do not, that such funds so contributed are public funds and that the legislature has the same right to dispose of them that it has to dispose of money raised by general taxation, the legislature has no right to pay out public money for private benefit. We concede the right of the state to care for the destitute, but public funds may not be used for the care of those who are not destitute. The state act makes no distinction. There is no difference between paying benefits generally to unemployed persons and making loans to farmers whose crops have been destroyed by drouth that they might provide themselves with seed for planting crops, or paying bounties to those who plant trees or raise sugar beets, or making gifts to manufacturing enterprises which establish themselves in the locality and thereby provide employment, all of which have been held invalid.

While the class to whom the benefits are to be paid is new and the attempt to place the burden on the two groups, employers and employes, is novel, the legal principles are ancient, have been tried time and again and have always been rejected by the courts as an illegal use of the taxing power.

In 1875 the legislature of Kansas sought to authorize townships to issue bonds to make loans to farmers for the purchase of grain for seed and feed. The validity of the act was challenged in the case of *State v. Township of Osawkee,* 14 Kan. 418 (2d Ed.) 322. Judge Brewer, who later became a justice of the Supreme Court of the United States, held the act invalid. Because of the eminence of this authority and the force of his reasoning we respectfully refer the Court to the opinion and take the liberty to quote a portion from it.

> "The credit of the township is invoked to procure funds for the accommodation of a single class temporarily, and through unexpected calamity, embarrassed in the prosecution of its ordinary business. Can this be called a public purpose? Clearly not. It would doubtless relieve the temporary wants of that class, would enable it to enter upon the business of the year with increased hope, and a reasonable expectation of ordinary success in that business, and thus indirectly result in great benefit to the general public. But a similar result would follow the success and prosperity of any other class in business. And if the principle be once recognized in its application to this class, who can tell how soon it may be invoked in aid of another? If one hundred farmers may receive seventy-five dollars each to assist them in farming, why may not one hundred mechanics with equal propriety receive seventy-five dollars each to assist them in their business? Or a single manufacturer, who employs one hundred hands, receive seventy-five hundred dollars to assist him in his manufacturing? A difference in amount makes no difference in the principle.
>
> "But it may be said that this legislation can be defended as preventive and anticipatory. To prevent the spread of disease, quarantine regulations are enforced, and ships coming from certain places are, with all their passengers, detained in quarantine,

even when not a solitary case of sickness exists on board. To prevent ignorance in the voter, the child is compelled to be educated. To prevent crime in the man, the boy is sent to the reform school. To prevent the spread of fire valuable buildings are pulled down and destroyed. Grant that these parties are not now helpless and dependent; that they are not a public charge. Unless they are able to make and harvest a crop they may become so the ensuing winter. Is it not the part of wisdom to expend a little now to purchase seed and feed, rather than run the risk of having them become paupers hereafter? Under the peculiar circumstances of this case, this argument is a strong one. We are not disposed to belittle the magnitude of the calamity, or make light of the hardships of those upon whom it has principally fallen. If we consulted simply our own feelings, we should gladly approve of this as of every effort to mitigate the severity of the blow. But though this calamity is great, and though by reason thereof it may seem wise to appropriate out of the public funds a little now to guard against the risk of future want, yet the principle is dangerous and unsound. Let the doorways of taxation be opened, not merely to the relief of present and actual distress, but in anticipation of and to guard against future want, and who can declare the result? How certain must be the expectation of want? How nigh its approach? What efforts must the individual make to ward it off? May he do nothing, and demand that the public make provision to guard against the possibility of future suffering? Must widespread and general calamity precede the granting of such anticipatory relief, or is it enough that individual misfortune or indolence render probable the approach of want? The mere mention of these questions suggests the dangers which would follow the adoption of this as a rule of public conduct.

"But the attendant dangers of such a rule are not the sole or the controlling considerations. The re-

lief provided in this act is only indirect, and contingent. There is no direct appropriation to meet future want. The appropriation is for present use, and the relief is contingent on the successful prosecution of the business of the recipients during the ensuing year. If the crop proves a failure, the public funds are lost, and no relief is secured. It is a speculation, which, however proper and reasonable for individuals, is not a legitimate part of public duty. The same principle would justify assistance to a mechanic destitute of tools, to enable him to purchase tools, and through their use in his regular calling prevent his becoming a public burden. Indeed, it would be difficult to deny its application in any case where, by present assistance, either in the purchase of implements or stock in trade, the recipient might reasonably be expected to earn a subsistence in the prosecution of his regular business."

State v. Township of Osawkee, supra.

Where the legislature of the State of Kansas attempted to authorize municipalities to incur debts for the purpose of giving money to aid manufacturing enterprises, the Supreme Court of the United States, in the case of *Savings and Loan Association v. Topeka*, 20 Wall. 655, said:

"We have referred to this history of the contest over aid to railroads by taxation, to show that the strongest advocates for the validity of these laws never placed it on the ground of the unlimited power in the State Legislature to tax the people, but conceded that where the purpose for which the tax was to be issued could no longer be justly claimed to have this public character, but was purely in aid of private or personal objects, the law authorizing it was beyond the legislative power, and was an unauthorized invasion of private right. *Olcott v. Supervisors*, 16 Wall 689 (83 U. S. XXI, 386):

People v. Salem, 20 Mich. 452; *Jenkins v. Andover*, 103 Mass., 94; Dill. Mun. Cor., sec. 587; 2 Redf. R. R. 398, rule 2.

"It must be conceded that there are such rights in every free government beyond the control of the State. A government which recognized no such rights, which held the lives, the liberty and the property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power, is after all but a despotism. It is true it is a despotism of the many, of the majority, if you choose to call it so, but it is none the less a despotism. It may well be doubted if a man is to hold all that he is accustomed to call his own, all in which he has placed his happiness, and the security of which is essential to that happiness, under the unlimited dominion of others, whether it is not wiser that this power should be exercised by one man than by many.

"The theory of our governments, state and national, is opposed to the deposit of unlimited power anywhere. The executive, the legislative and the judicial branches of these governments are all of limited and defined powers.

* * * * * * * * * * * * * *

"To lay, with one hand, the power of the government on the property of the citizen, and with the other to bestow it upon favored individuals to aid private enterprises and build up private fortunes, is none the less a robbery because it is done under the forms of law and is called taxation. This is not legislation. It is a decree under legislative forms."

Cole v. City of LaGrange, 113 U. S. 1, 28 L. Ed. 896;

Parkersburg v. Brown, 106 U. S. 487, 27 L. Ed. 238;

We refrain from citing many cases from many jurisdictions upholding the principle for which we are here

contending. The recent decision of this court in the Pension Case (*Railroad Retirement Board vs. Alton Railroad Co.*, 295 U. S. 330) conclusively supports it.

The Act of Congress was invalidated in the Pension Case because it violated the due process clause of the Fifth Amendment, which is the same as the due process clause of the Fourteenth Amendment, applicable to state legislation, and also because it did not constitute regulation of interstate commerce under the Commerce Clause of the Constitution. (In the latter respect it is in harmony with the decisions in the AAA and Guffey cases cited under Point I in holding that Congress cannot legally legislate outside of the field of its power, even though it uses the disguise of taxation.)

It is submitted that an examination of the provisions of the Railroad Retirement Act will show it is strikingly similar to those of the Alabama Compensation Insurance Act. It will be difficult to find a closer precedent. The Railroad Retirement Act established compulsory retirement and a pension system, for all interstate railroad carriers.

(The state act establishes a compulsory employment compensation for all employes of a narrowly defined class of employers.)

In the pension act there was a provision for the creation of a fund to be deposited in the United States Treasury, and administered by a board denominated an independent agency in the executive branch of the Government.

(Here we have created through enforced state taxation a fund to be known as an Unemployment Trust Fund to be deposited in the United States Treasury, and to be disbursed, and in reality administered, through a Federal board set up for this purpose.)

The fund which was to be used for pensions to employes and for administrative expenses was to arise from compulsory contributions from present and future employes and from the carriers; the sums payable by the employes were to be percentages of their current compensation, and those by each carrier double the total payable by its employes. The board was to determine from time to time what percentage is required to provide the necessary funds, but until that body otherwise determines, the employe contribution was fixed at two per cent. of the compensation.

(Here the fund is to be made up of compulsory contributions from the employes of the employers and from the employers, the contributions being based on percentages of the wages earned, the per cent. being fixed until 1941 at a fixed amount and after that time in such amount as determined by the board within the range of a maximum and minimum percentage.)

The classes of persons eligible for the pensions were (1) employes of any carrier on the date of the passage of the act; (2) those who subsequently became employes of any carrier; and (3) those who within one year prior to the date of the enactment were in the service of any carrier. To every person in any of the three categories, a pension became payable from the company (a) when he reached the age of sixty-five years, whether then in the carrier's service or not; if still in such service he and his employer might agree if he was to remain for successive periods of one year until seventy years old, when he must retire; (b) at the option of the employe at any time between the ages of fifty-one and sixty-five, if he had served a total of thirty years in the employ of one or more carriers, whether continuously or not. The pensions were payable monthly and the amount was to be ascertained by multiplying the number of years of

service, not exceeding thirty, before as well as subsequent to the date the act was adopted, whether for a single carrier or a number of carriers, and whether continuous or not, by the graduated percentages of the employe's average monthly compensation (excluding all over $300.00). Upon the death of an employe before or after retirement, his estate shall be repaid what he had contributed to the fund, with three per cent. interest compounded annually, less any sums received by him from the Pension Fund.

It is therefore seen that the Railroad Retirement Act and the state act proceed on closely analogous theories. Both statutes provide for contributions from employers and employes to a central federal pool, from which benefits are payable solely to former employes. Both statutes treat all employers affected as a single group irrespective of their different positions. Both statutes grant money as a matter of right from one class to another and without regard to need. Both grant full cash benefits to former employes (the one when they become sixty-five years old; the other a designated number of weeks after registering as unemployed) who have been discharged for misconduct. Both require the employer to pay fixed amounts based on the payroll without regard to the number, in the one case of its superannuated employes, and in the other of its unemployed employes.

The state act goes further and requires fixed amounts from an employer irrespective of the number of his employes who may become unemployed. Men are bound to reach the age of sixty-five but it is not at all inevitable[1] that a given employer in Alabama will have no unemployment in his business which may be regularly expanding from one year to the next. Both acts were

[1]The evidence in this case proved this to be certain (Affidavits R—230, 214, 260, and 268.)

based on the same social theory and both claimed to have been enacted for the public welfare and to serve a National need.

We quote from the decision in the Pension Case:

> "Certain general features of the system violate the Fifth Amendment. Under the statutory plan the draft upon the pension fund will be at a given rate, while the contributions of individual carriers to build up the fund will be at a disparate rate. This results from the underlying theory of the Act, which is that all the railroads shall be treated as a single employer. The report of the Senate subcommittee announced: 'It is agreed that all railroads which have been subjected to the jurisdiction of Congress are to be treated together as one employer. All persons in the service of the railroads are to be regarded as employes of the one employer. * * * The old age pension or annuity is to be based upon the wages and the length of service upon all railroads, with specified maximum limits.'"

(In like manner the state act treats all employers falling within the defined class in effect as one employer; and all employes as one class no matter whom their employers may be; every employer and every employe contributing to the pool fund without reference to whether the employes ever become eligible for compensation.)

> "The evidence shows that some respondents are solvent and others are not, a situation which often may recur. The petitioners concede that the plan is intended to furnish assurance of payment of pensions to employes of all the carriers, with the result that solvent railroads must furnish the money necessary to meet the demands of the system upon insolvent carriers, since the very purpose of the Act is that the pension fund itself shall be kept solvent and able to answer all obligations placed upon it."

(Likewise the state act makes solvent employers and their employes carry the burden of insolvent employers and their former employes.)

"This court has repeatedly had occasion to say that the railroads, though their property be dedicated to the public use, remain the private property of their owners, and that their assets may not be taken without just compensation. The carriers have not ceased to be privately operated and privately owned, however much subject to regulation in the interest of interstate commerce. *There is no warrant for taking the property or money of one and transferring it to another without compensation, whether the object of the transfer be to build up the equipment of the transferee or to pension its employes.* * * *

"The argument is that, since the railroads and the public have a common interest in the efficient performance of the whole transportation chain, it is proper and necessary to require all carriers to contribute to the cost of a plan designed to serve this end. It is said that the pooling principle is desirable because there are many small carriers whose employes are too few to justify maintenance of a separate retirement plan for each. And, finally, the claim is that, in fixing carrier contributions, any attempt to give consideration to difference in age, classification, and service periods of employes would involve grave administrative difficulties and unduly increase the cost of administration. With these considerations in view, the petitioners urge that our decisions sanction the exercise of the power involved in the pooling feature of the statute. * * *

"We conclude that the provisions of the Act which disregard the private and separate ownership of the several respondents, treat them all as a single employer, and pool all their assets, regardless of their individual obligations and the varying conditions found in their respective enterprises, cannot be justified as consistent with due process."

The court further said in the Pension Case:

> "It is arbitrary in the last degree to place upon the carriers the burden of gratuities to thousands who have been unfaithful and for that cause have been separated from the service, or who have elected to pursue some other calling, or who have retired from the business, or have been for other reasons lawfully dismissed."

(The state act does all of this and more. It requires the employer to support the employe who steals his funds or, while on strike, dynamites his property.)

And in calling attention to the fact that the act denied due process of law in giving pensions to those who had left the carriers' employ, the court said:

> "Plainly this requirement alters contractual rights; plainly it imposes for the future a burden never contemplated by either party when the earlier relation existed or when it was terminated. The statute would take from the railroads' future earnings amounts to be paid for services fully compensated when rendered in accordance with the contract, with no thought on the part of either employer or employe that further sums must be provided by the carrier."

There is nothing new in the decision of the Court in the Pension Case to the effect that there is a denial of due process when you take property of one and bestow it on another. It has been uniformly held that if Congress levies or collects a tax for purposes other than the "common defense" and the "general welfare" of the United States (the AAA case and the Guffey case cited under Part I definitely held that this tax cannot come under the general welfare clause) it constitutes taking property

without due process of law in the exaction and is therefore unconstitutional.

In all of the above cited cases, and in many others from numerous jurisdictions, plausible arguments were advanced to the effect that the public as a whole would benefit indirectly by the proposed appropriation of the moneys to be raised by taxation. Nevertheless, in every case and *irrespective of any express constitutional prohibition,* the legislation fell when an attempt was made to employ the taxing power for an essentially private purpose; an indirect and remote benefit to the nation, state or community was never deemed a ground for the direct spoliation of one group of the population at the behest and for the profit of another group however large. Such legislation has been uniformly condemned because depriving the taxpayer of his property without due process of law, his private property being taken for private use without just compensation.

If it is thus beyond the power of the sovereign, by means of general taxation, to accomplish such ends, it follows that any attempt to tax *a part only of the public,* or specific corporations or classes or individuals, for such ends is *a fortiori* an abuse of power.

Probable Contentions of Appellants

Appellants cite as sustaining their claim that the Federal and State Acts are in the public interest and, therefore, justified under the so-called "Welfare Clause" of the Federal Constitution, a number of cases which not only can be easily differentiated from the present case but have been so differentiated by the Supreme Court of the United States in its recent decisions. Among the cases cited by the appellant are cases sustaining Workmen's Compensation Acts, illustrated by the case

of *Mountain Timber Company v. Washington*, 243 U. S. 219; the bank cases illustrated by the case of *Noble State Bank v. Haskell*, 219 U. S. 104; the Head Money Cases illustrated by the case of *Eddye v. Robertson*, 112 U. S. 580. The inapplicability of these cases and other cases relied on by the defendants has been so clearly set forth by the Supreme Court in its recent decisions that it is only necessary to refer briefly to these decisions.

In differentiating the case of *Mountain Timber Co. v. Washington*, 243 U. S. 219, the Supreme Court, in the Pension Case, used the following language:

> "For the purpose of payments into the fund accounts were to be kept with each industry in accordance with a statutory classification, and it was *definitely provided* that no class should be liable for the depletion of the accident fund by reason of accidents happening in any other class. The act, therefore, clearly recognized the difference in drain or burden on the fund arising from different industries and sought to equate the burden in accordance with the risk. The challenge of the employers was that the statute failed of equitable apportionment as between the constituted classes. But no proof was furnished to that effect, and this court assumed that the classification was made in an effort at fairness and equity as between classes. The Railroad Retirement Act, on the contrary, makes no classification, but, as above said, treats all the carriers as a single employer, irrespective of the several conditions."

The state act makes no classification among the employers affected, treats them all as one great mass, makes employers in nonseasonal industries subsidize unemployment of employes in seasonal and casual employments; requires stenographers and bookkeepers in a law office to contribute to benefits for the unemployed in the oyster business, the employes of stores in the strictly

farming section of Alabama to pay benefits to ore miners in the mineral belt, and establishes a pool fund to which all employers are required to contribute without any reference to, or trace of, obligation to the vast majority of those who are authorized to receive benefits from the fund.

Additional conclusive evidence of the inapplicability of the Workmen's Compensation cases can be found by reading from the opinion of the Court in the Pension case, 295 U. S. 330, at pp. 369, 371.

The case of *Noble State Bank v. Haskell*, 219 U. S. 104, and similar cases, were distinguished in the Pension Case. The Haskell case upheld an Oklahoma statute which required state banks to contribute a uniform percentage of their deposits to a state guarantee fund established for the purpose of making good losses to the depositors of banks which might become insolvent. In the Bank Case the Supreme Court pointed out that banks are peculiarly subject to regulation. For example, the state may fix a minimum of capital required of those desiring to engage in the banking business; investments of banks may be restricted by law; examinations may be made by the state and the cost thrown on the bank; special methods of liquidation are provided, etc., etc. Stress was laid upon the fact that all banks, as financial institutions, would benefit by the prompt payment of depositors in the event of insolvency of any one bank.

Under the Alabama law, however, thousands of persons of every kind and character, whose business is wholly private in nature, are made subject to compulsory exactions in favor of individuals having no relation whatever to the persons from whom the money is taken.

In distinguishing the Bank Case from the pension scheme, Mr. Justice Roberts, at page 360, said:

"In the second case (Haskell Case) this court upheld a statute which required state banks to contribute a uniform percentage of their deposits to a state guarantee fund established for the purpose of making good losses to the depositors of banks which might become insolvent. The Act was sustained upon the principle that an ulterior object, even, may justify the taking of a comparatively insignificant amount of private property for what, in its immediate purpose, is a private use. It was further said that there may be cases other than those of taxation in which a share of each party in the benefits of a scheme of mutual protection is sufficient compensation for the correlative burden which it is compelled to assume. These considerations clearly distinguish that case from the one now under discussion."

The final answer to appellants' support of the pool plan provided for by the state act is found in the following conclusions of the Supreme Court of the United States in the Pension Case:

"We conclude that the provisions of the Act disregarding the private and separate ownership of the several respondents, treating them all as a single employer, and pooling all their exactions regardless of their individual obligations and the varying conditions found in their respective enterprises, cannot be justified as consistent with due process."

It should be noted, of course, that the varying conditions found in the respective enterprises covered by the state act are multiplied a thousand fold in comparison with the enterprises affected by the pension law. Under the Alabama statute every kind of enterprise employing eight employes or more is forced to meet the exactions of the law and contribute to the pool fund, whereas, in

the pension case only railroads whose businesses partake of many similarities were included.

Likewise, appellants can find no support for the state act in the *Head Money Case* (*Eddye v. Robertson*, 112 U. S. 580). This case had under consideration an Act of Congress regulating immigration. In order to discourage steamship companies from dumping in America, "criminals, paupers, and diseased persons," the statute required the companies to pay the sum of fifty cents for all passengers not citizens of the United States. The money was to be paid into the United States Treasury and was to constitute a fund to be used for the defraying of the expenses of regulating immigration under the act and for the relief of immigrants in distress. The court held that the burden imposed on the ship owners "is a mere incident of the regulation of commerce,—of that branch of foreign commerce which is involved in immigration." Otherwise stated, the imposition found a constitutional basis under the commerce clause of the Constitution. The imposition was held not to be a tax within the meaning of the Constitution, but, rather, an incidental sum derived from a statute the primary purpose of which was the regulation of immigration. The Head Money Statute was designed primarily to check undesirable immigration by imposing a burden upon ship owners subject to regulation under the commerce clause who did the act deemed undesirable. The unemployment compensation law, on the other hand, purporting to operate under the tax clause of the Constitution, exacts money from the employer in direct ratio to the number of persons to whom he gives employment. The more employment he gives the greater the forced contribution on his part.

In the effort to differentiate the Pension Case from the one under consideration appellants emphasize par-

ticularly the retroactive effect of a part of the statute and entirely overlook the other and more emphasized reasons assigned by the Supreme Court for holding the pool fund unconstitutional as violative of due process.

As a matter of fact, however, the state act contains a retroactive provision which will operate against employes, namely, the provision in the act which will bestow the additional benefits [Section 5 (f)] in the ratio of one week of total unemployment benefit or its equivalent to every unit of twenty aggregate weeks employment accruing in the 260 weeks preceding the close of the employe's most recent week of employment. When benefits become available on and after January 1, 1938, under this provision many employes may and many may not be paid additional benefits ascertained under the five-year retroactive yardstick furnished by this provision of the act.

This Court has very recently, in the case of *Thompson vs. Consolidated Gas Utilities Corporation* (in MSS.) reasserted the prohibition of the Constitution against the taking of private property, without just and full compensation, for a non-public purpose. In this case the State of Texas sought to sustain the Texas statute (House Bill 266) under the authority of which the Railroad Commission of Texas sought to regulate the production of sweet gas from wells in the Panhandle oil fields under the contention that it was justified under the police power of the state because for "a public purpose."

The Court said:

> "Our Law reports present no more glaring instance of the taking of one man's property and giving it to another. In Missouri Pacific Ry. Co. v. Nebraska, 164 U. S. 196 (note no. 30); Great Northern Ry Co. v. Minnesota, 238 U. S. 340; Great Northern Ry. Co. v. Cahill, 253 U. S. 71;

Delaware, Lackawanna and Western R. R. Co. v. Morristown, 276 U.S. 182, and Chicago, St. Paul, Minneapolis & Omaha Ry. Co. v. Holmberg, 282 U.S. 162, expenditures directed to be made for the benefit of a private person were held invalid, although the party ordered to pay was a common carrier. In Loan Association v. Topeka, 20 Wall, 655, and Cole v. LaGrange, 112 U.S. 1, the payments ordered for the benefit of a private person were declared invalid, although the money was to be raised by general taxation. In Myles Salt Co., LTD. v. Board of Commissioners, 239 U.S. 478, the exaction was held unlawful, though imposed under the guise of an assessment for alleged betterments. Compare Georgia Railway & Electric Co. v. Decatur, 295 U. S. 165. And this Court has many times warned that one person's property may not be taken for the benefit of another private person without a justifying public purpose, even though compensation be paid. See Hairston v. Danville and Western Ry. Co., 208 U.S. 598, 605, 606; Rindge Co. v. County of Los Angeles, 262 U.S. 700, 705. Compare Cincinnati v. Vester, 281 U.S. 439, 446, 449."

Proposition II.

SECTION 4 (d) OF THE STATE ACT IS IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES BECAUSE IT TAKES PRIVATE PROPERTY FROM ONE CLASS FOR THE USE OF ANOTHER; ITS PURPOSE IS NOT A PUBLIC PURPOSE IN THE SENSE IN WHICH THE WORDS "PUBLIC PURPOSE" ARE USED AS JUSTIFYING THE TAKING OF PRIVATE PROPERTY WITHOUT JUST COMPENSATION.

If the exaction against employers is in violation of the Fourteenth Amendment because it is a taking of private property from one class for the use of another, a fortiori, is Section 4 (d), which imposes a tax upon employes. This is demonstrated by a consideration of the following facts:

(a) Title IX of the federal act imposes no tax upon employes. It places the entire cost of the project on the employers on the theory that industry can properly be charged with the burden because of its ability to pass the cost on to customers and consumers, and it uses the modus operandi of the tax credit "device" for the purpose of applying the pressure on the states to enact uniform unemployment statutes in order to insure just and fair competition. It was never intended by the federal act to impose a tax under Title IX upon employes. The imposition by Alabama of this tax is almost an anomaly, and is foreign both to the purpose of Title IX and to the means provided for effecting the purpose.

(b) The *New York Unemployment Insurance Law* (Laws 1935, c. 468; Consolidated Laws c. 31), the only state act previously under consideration by this Court in *Chamberlain, Inc. vs. Andrews, et al*, did not impose any tax upon employes.

This case, therefore, presents the first case for the consideration of this Court involving the validity of taxes imposed upon employes of a defined class having fellow employes of seven or more.

(c) The discriminatory and capricious features in the state act, as marked and as arbitrary as they are with reference to employers, are much more striking and glaring in reference to employes.

(d) In the case of the employe there is no basis for the argument made by appellants to support the tax

against the employer that there exists a duty on the employer to prevent unemployment.[1]

(e) The principal argument of appellants to sustain the tax against the employer is that benefits can properly be financed by employers as a business cost.[2]

(f) The reasons assigned in (d) and (e) above in support of a tax on employers, provided the classification is reasonable and not capricious, as was found to be the case in the Workmen's Compensation Cases, are not applicable in the case of the tax against employes.

How can the employe control the cost of his employer's product? Appellant's brief, and the cases cited in support, are predicated upon the fact that the tax against the employer is justified because it can be passed on to the consumer, and, therefore, in the last analysis, falls upon the general public, which is interested in the general welfare. How can the tax against employes be passed on by them to the public? On the contrary, there may follow exactly the opposite result, namely, the en-

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[1]That such a duty arose against the employer was held by the Court of Appeals of New York in the case of *Chamberlain, Inc., vs. Andrews*, 2 N. E. (2nd Series) 22, in the following words: "If industry, charged with the responsibility of supplying work, can not provide him ('the employe') one ('a job'), then it should be compelled to contribute to a fund from which he and his family may have bread while he is without employment."

[2]This thought is expressed in the majority opinion of the Court of Appeals of New York in the Chamberlain Case, supra, in the following language: "Instead of the policy of taxing all the people directly, it ('the Legislature') has passed a law whereby employers are taxed for the help of the unemployed, the sums thus paid being cast upon the public generally through the natural increase in the prices of commodities. Whether relief be under this new law of the Legislature or under the dole system, the public at large pays the bill."

In the case of *Howes Bros. Co. v. Massachusetts U. C. Commission*, 5 N. E. (2nd Series) 720, 726, the Supreme Judicial Court of Massachusetts, in sustaining the tax, used the following language: "Workmen's compensation acts have been supported as an exercise of the police power. Their effect is to impose on the designated classes of employers of labor the burden of compensation for injuries to employes arising out of and in the course of their employment, leaving the employer to reimburse himself for the expense as a part of the cost of his product. (Citing New York Central Railroad Company vs. White, 244 U. S. 188; Mountain Timber Co. vs. Washington, 243 U. S. 219, and other cases.) In reasoning it is difficult to distinguish these decisions from the case at bar."

forced reduction of wages by the employers when this tax, becoming more and more onerous, prevents its being passed on to a public refusing to purchase at an overbearing cost. Can it be seriously contended that the Washington Workmen's Compensation Law, or that of any other state, would have been sustained if, like the state act, it had imposed upon all employes of a definite class a tax to establish a pool fund out of which injured employes would receive compensation?

(g) The federal act imposes no tax on employes and it allows no credit to employes on any tax paid by them. (Sections 901, 902).

(h) Proponents of the federal act claim that stabilization of employment is its main object; that no economic system can afford to accept wide fluctations of employment as permanently necessary and inevitable. Taxes against employes can not possibly be related to stabilization of employment. The hiring and firing is done by the employer. If employment is to be stabilized each management must tackle the job and be given inducement to smooth out the peaks and valleys. It can not be had by *taxing* the employe.

(i) None of the decisions of this Court cited by appellants in support of their claim that the state act is not in violation of the Fourteenth Amendment to the Constitution can be made applicable, even by argument, to the tax imposed against the employes.

1.—The case of *Mountain Timber Company vs. Washington*, 243 U. S. 219, and other cases involving state workmen's compensation laws, which, as stated by appellants, "have universally treated work injuries as a cost of production by requiring the employer to pay for them," can not possibly be extended so as to require the EMPLOYE to make payments for anticipated injuries or anticipated unemployment.

2.—The case of *Noble State Bank vs. Haskell,* 219 U. S. 104, on the theory that banking was a business invested with the public interest, and because of the fact that every bank is interested in the solvency of other banks in the state and affected by their insolvency, and for other reasons sustained a tax against the BANK based on a designated per centum of its average daily deposits to create a fund out of which full repayment might be made of the deposits in any bank that failed.

As previously pointed out, this case is inapplicable to the employer, but even if applicable, how could it possibly be applied to the tax imposed by the state act against employes? Can it be contended that this Court would have sustained the Oklahoma bank statute if it had imposed the tax not only against the bank on the basis of its deposits but had sought also to tax each individual depositor?

3.—In the *Head Money Cases,* 112 U. S. 850, the right of the Congress under the commerce clause of the Constitution to regulate by the bringing of indigent immigrants to the United States by steamship companies engaged in foreign commerce was upheld. Can it be seriously contended that such a tax would have been sustained (aside possibly from the power contained in the commerce clause) had it been imposed upon the ship's crew of the steamship company?

4.—Similarly, in the cases of *Phoenix Insurance Co. v. Fire Department of City of Montgomery,* 117 Ala. 631, and *Cobb v. Home Insurance Co. of New York,* 91 So. 627, relied upon by appellants, would this Court, although it might follow the Supreme Court of Alabama in sustaining a tax against fire insurance companies, dependent for continued existence upon fire protection, for the assistance of firemen engaged in the public duty of fire protection, sustain a tax against the firemen for the

benefit of other firemen or the families of other firemen? Otherwise stated, could the fire departments in Alabama be constitutionally grouped in a class and required to deposit into a pool fund a certain per centum of their income for creating an insurance fund for the benefit of all firemen and their families? If so, there is no limit to the probabilities of such a ruling. On the same basis lawyers could be forced to contribute to a pool fund for the support of indigent lawyers; physicians for the unfortunate members of their profession; etc., ad infinitum.

It is submitted that if there can be any doubt as to the unconstitutionality of Section 4 (a), (b) and (c) of the state act imposing the tax upon employers, no such doubt can be found in considering the tax imposed by Section 4 (d) of the state act against employes.

Proposition III.

IF SECTION 4 (d) OF THE STATE ACT IS UNCONSTITUTIONAL, THE ENTIRE ACT, NOTWITHSTANDING THE SEPARABILITY CLAUSE, MUST FALL.

Carter v. Carter Coal Co., 298 U. S. 238, 312 313;
Railroad Retirement Board v. Alton Railroad Co., 295 U. S. 330, 362.

No one can conclude that the Legislature of Alabama would have passed the state act if the provision for taxes against the employes had been eliminated. This provision was inserted deliberately, notwithstanding it was not one of the "must" provisions of the federal act. When the act was before the Legislature for a *slightly* more mature consideration at its special session and was amended in many particulars, the Legislature again

evinced its determination to impose the tax on employees and again legislated this provision into the body of the act. To remove it takes away more than one-half of the 1936 fund which the Legislature deemed necessary for the purposes of the legislation. To hold this provision invalid and the remaining provisions of the state act valid the Court would in effect enter into the legislative field.

Proposition IV.

THE EXACTIONS IMPOSED BY THE STATE ACT ARE IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES BECAUSE IN THEIR CLASSIFICATION AND OTHER FEATURES THEY ARE UNREASONABLE, ARBITRARY OR CAPRICIOUS.

There can be no doubt about the general principles which govern courts in determining whether federal statutes are in violation of the Fifth Amendment or state statutes in violation of the Fourteenth Amendment because unreasonable, arbitrary or capricious. The rule is clearly expressed in the opinion of the Supreme Court of the United States in the case of *Nebbia v. People of State of New York*, 54 Sup. Ct. Rep., page 510 (4, 5), in the following language:

> "The Fifth Amendment, in the field of Federal activity (Adyston Pipe & Steel Co. v. U. S. 175 U. S. 211, 228, 229), and the Fourteenth, as respects State action (Barber v. Connolly, 113 U. S. 27, 31; Chicago B. & Q. R. Co. v. ex rel. Illinois, 200 U. S. 561, 562), **do not prohibit governmental regulation for the public welfare. They merely condition the exertion of the admitted power, by securing that the end shall be accomplished by methods consistent with due process. And the**

guaranty of due process, as has often been held, demands only that the law shall not be unreasonable, arbitrary, or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained. It results that a regulation valid for one sort of business, or in given circumstances, may be invalid for another sort, or for the same business under other circumstances, because the reasonableness of each regulation depends upon the relevant facts."

Let us consider the relevant facts in the case under consideration as the proper yardstick for determining the validity of federal and state acts under the definition quoted above.

Summary of Unreasonable, Arbitrary or Capricious Provisions of Federal and State Acts.

(a) The act makes no classification among the employers and employes affected and treats them all as one mass. For illustration, employers and employes in non-seasonal industries are called upon to subsidize the unemployed employes of seasonal and casual employers; employers and their employes engaged in the practice of professions and who work three hundred and sixty-five days in the year, are taxed to pay benefits to employes engaged in a canning factory during its seasonal operation.

(b) While the act operates solely on a limited employe relationship, the payment of benefits is on an entirely different theory from that which has been approved under workmen's compensation laws.[1] Work-

[1]Even in the case of workmen's compensation the Court will note that in Alabama and numerous other states there are such doubts of the constitutionality of a compulsory law on this subject that it is left to the election of the employer and employee as to whether or not they will accept the provisions of the act.

men's compensation laws pay compensation for injuries, disease or death only if they arise *out of* the employment, while under this act benefits are paid without reference to the cause of nonemployment, without any casual connection between the employment and the resultant injury. Employers are not responsible for weather conditions, European wars, floods, droughts, economic laws, such as supply and demand, foreign competition in world markets, etc., but under the provisions of this act the employers and employes are taxed for the relief of unemployment on account of factors beyond their control, and for which they are no more responsible than are all other classes of citizens.

(c) The taxes are imposed and the benefits are paid to unemployed individuals regardless of the amount paid into the fund by their former employers, by themselves, or by their fellow employes. Thus a paying employer and a paying employe bear the burden of the defaulting employer or the unemployed employe. The diligent takes care of the shiftless.

(d) The benefits are paid without regard to the changing residences of the unemployed individual (aside from the irrevisable rules of the Commission in reference to reporting for work,—such reports may be in writing). Thus an Alabama employe becoming entitled to the benefits under the Alabama law may remove to and become a citizen of the State of California or some other state which may or may not have adopted a federally approved law, and all Alabama employers and employes will be required to continue to pay his benefits.

(e) The benefits are paid as of right and without inquiry as to the need of the donee. Thus employers and employes may be taxed to pay benefits to an unemployed individual who during the time of his employment has accumulated a competency and who has ample means

not only to take care of himself, but if he wishes, to take care of others who have not been so saving or prudent.

(f) An employe discharged for unfaithfulness or peculation, drunkenness, sabotage, or any other just cause, receives a full monetary benefit—a far cry from the statutory declaration of policy as to "persons unemployed through no fault of their own"; an employe who voluntarily abandons his job is entitled to the benefits; an employe who refuses to accept a position vacated by a man who, with or without cause strikes, is entitled to full monetary benefits—a strange commentary on the statement of the declaration of policy relating to "involuntary unemployment"; benefits are not taken away even though employment is offered in the same village at a living wage if such wage is found to be substantially less advantageous to the employe than that prevailing in the same locality; and the unemployed (with the exception of a short waiting period) does not lose his benefits though work is obtainable at a *better wage*, the work, however, not being similar to the work that he was doing at the time the unemployment occurred.

(g) The benefits are paid without any reference to the physical or financial condition of the recipient.

(h) Instead of sub-classifying by trades, industries or occupations, treating all within each trade in the same manner, any employer employing eight or more employes and his employes must pay the imposed taxes and any employe who has seven or more fellow employes is entitled as a matter of right to the benefits. This is discrimination run riot. The mere accident of number is made the signal to tax and to receive benefits. Thus a business where there are seven employes may and often does under more efficient management or under different conditions, produce more business than a

similar business employing eight or more employes. Employers of the latter are taxed and their employes are eligible for benefits while employers of the former are not taxed and their employes are not eligible for benefits. Again, a business where there are seven employes may produce the same amount of the same product as a business employing eight employes, both businesses may be side by side, identical in character, have an equal volume, make the same profit or sustain the same loss, and yet the employer and his employe in one case pay the tax and the employes receive the benefit and the other does not. Will an employe having six fellow employes consume more goods or service than an employe having seven fellow employes? Will the former suffer less from unemployment or be less apt to become a public charge than the latter?

(i) The recipient of the benefits is not required to show that he is in need; the statute contains no provision guaranteeing that the benefits will be used to support the recipient, nor does it contain any provision controlling in any respect the use of the benefits by the recipient for any purpose, public or private; the benefits are payable to a minor despite the fact that such minor may be actually supported by his parents; to a married woman despite the fact that she may be supported by her husband; to a divorcee despite the fact that she may be receiving alimony; and to unemployed individuals despite the fact that they have been fully compensated for their services as employes and have no legal, equitable or moral claim upon any of the persons required to make contributions to the fund; no part of the fund is for the use of the state but is solely and exclusively for the payment of benefits to individuals; and last but not least, the benefits are not payable to all unemployed employes but to only a sharply defined, limited number, who in

many instances have been unemployed for a shorter time than the thousands of workers not covered by the statute.

(j) Ship owners employing hundreds of sailors, stewards, cooks and others, and their employes are excluded from the tax and benefit, while employers in transportation services on land and their employes must pay the tax and their employes be allowed the benefits; railroads and their employes are exempted from taxation and the employes denied the rights of benefits, while bus and air carriers engaged in exactly the same type of business are taxed and their employes entitled to benefits; the owner of, and the chauffeur for, a private car are exempted, but if the same chauffeur is employed to drive a taxi, he and his employer must pay the tax and he becomes entitled to the benefits.

(k) Insurance companies, (State Act, Sec. 2-6) employing thousands of solicitors or agents, and their employes, are excluded from exactions and benefits while employers in many other kinds of businesses, and their employes, are required to pay the tax, and their employes, if eligible, may receive the benefits.

Surely there can be no possible justification for excluding from the law an employe-solicitor of an insurance company and including in it an employe-solicitor of a real estate agency. Every one knows that in most cases the same company operates under the same roof and at the same desks an insurance business and a real estate business employing the same type of salesmen and paying them on a commission basis.

(l) This so-called tax for aiding the unemployed falls most heavily on the man who keeps people regularly employed; the man who employs fewer persons and at irregular and casual intervals, pays nothing, or pays less.

(m) It is idle to say that employes in the various exempted classes may not be just as needy and desirous of national aid and philanthropy as any other employe in any other service. Again, if wholesale benefits are so desirable for public welfare, why should employes in the exempted classes be prohibited from receiving their share of this national philanthropy? Again, no reason may be found why the employes in the exempted classes (if they desire compensation insurance) should be required to purchase it while others who will suffer no more from unemployment will be provided with insurance by a benevolent and paternal government. Does a domestic in a private home who becomes unemployed suffer any less than a chamber maid in a hotel who loses her job? Why should the employe of a commercial greenhouse be subject to the act when the farm hand working across the fence from him is outside its scope?

(n) The state act by exacting contributions from seasonal industrial workers and their employers and imposing general qualifications for benefits not applicable to the periods of their employment deprives them, as well as their employers, of property without due process of law.

The state act provides that an employe is not eligible to benefits unless he has been gainfully employed in the state for a specified number of weeks within a specified time. This requirement applies to all workers contributing under the state act, and the state act in no way makes it possible to alter these qualifications for the special situation of a seasonal worker who, although required to pay the tax, because of the nature of his employment will, in many instances, be unable to meet the general qualifications, which were made for the worker who has the possibility of a year-round employment.

It is denial of due process for the Alabama act to *demand* and *exact* contributions from the seasonal employer and employe, and then to set up conditions and qualifications for benefits which the seasonal worker, though probably employed throughout his entire season, cannot meet merely because of the seasonal character of the taxed employment. While the burden of taxation cannot be nicely adjusted between burden and benefit, the Legislature must recognize natural and well defined classes when legislating to provide a system of unemployment benefits.

In some cases it will be impossible for the seasonal worker to fulfill the employment period requirement if the season is less than twenty-six weeks or, if the season is longer, he must remain continuously employed during all or most of the season; whereas the worker in a year-round industry has an opportunity for employment within the entire year and the requirement of one-half a year's employment is obviously drawn upon the possibility of there being year-round employment.

The failure to make special provision for the Alabama seasonal worker results in the imposition of a burden without any corresponding benefit.

The Constitution does not allow the burden of this special taxation to be placed on seasonal employers and employes, and the Legislature to impose qualifications for benefits which will deprive the seasonal employe of a proportionate equal opportunity for benefits based upon the nature and character of his employment. It must be borne in mind that contributions are required from the employer on the theory that unemployment may be considered a cost of production just as the injuries suffered in industry are so considered, and that the employer's contributions go to maintain a reserve of labor, and hence may properly be considered an item of over-

head expense. The exaction from the employer is further defended on the ground that he, as a producer, is indirectly benefited by the general business activity which is maintained through the maintenance of the purchasing power of the unemployed. The exaction from the employe is defended on the ground that he should contribute as he is the one who is primarily benefited, and that, by these contributions, the employe maintains his morale and self-respect.

But the general and non-adjustable qualification period of employment denies to the seasonal employee the possibility of receiving benefits, and therefore denies to employer and employe the very things by which the tax upon them is defended. Thus the protection and help which the act seeks to provide become for the taxed seasonal worker and his employer a delusion and an empty promise. The statute so imposing inescapable burden but denying any possibility of benefit is an unreasonable discrimination and a clear taking of property without due process of law.

In this connection it should be noted that the Unemployment Acts of New York (Labor Laws, Art. 18, Section 508), Idaho (H. B. No. 8-18A), Oregon (Sp. Sess. 1935, H. B. 71, Sect. 7), Massachusetts (General Laws 1932, Chap. 151-A, Section 26), and, we understand, the laws of other states all contain provisions not found in the Alabama act which make special provision for the seasonal worker.

The evidence in this case discloses that there exist in this state many seasonal businesses and occupations. The appellee, in common with all commercial coal operators in the State of Alabama, is engaged in a seasonal business, while appellee Gulf States Paper Corporation, in this Court, is engaged in a business that works on double shifts for the entire year. Not only does the evidence

in this case show the existence of seasonal businesses, the unfair operation of the law against such businesses and their employment personnel, but the Court, we submit, can take judicial knowledge of the fact that there are many other businesses in Alabama which are distinctly seasonal—for illustration, the oyster and fish business, cotton seed oil mills, cotton compresses and warehouses, canning and preserving of fruits, saw mill and logging industry, naval stores and supplies, professional baseball[1], etc., etc., including the building trades.

(o) Further illustrating the arbitrary feature of the tax as against employees, we submit that there is no reason for imposing taxes upon a truck driver who hauls dirt for a contractor and not imposing any tax upon a truck driver who hauls dirt for a city or one who hauls farm produce for a farmer. There is no reason for imposing taxes on a waitress in a restaurant and not imposing any tax upon the domestic servant. While public employers may be less prone to reduce expenses to conform to reduced income than are private employers, is there any reason why public employees should not contribute to the so-called *general welfare* by helping those who do lose their employment to continue their power to consume goods and services? Experience shows that even during the recent period of unemployment only one out of four persons formerly employed lost his job. Then why should the public employe or the agricultural laborer be exempt from contributing to this so-called *general welfare* and the three out of four employes in private employment who, according to experience, will not lose their jobs, even in a severe depression, be compelled to contribute? The only answer is that the classification is purely arbitrary and is based upon an erroneous

[1]In a recent release the Treasury Department has held baseball players employees under the act.

assumption of similarity between the acts here in question and the Workmen's Compensation Act.

> "Immunity granted to a class, however, limited, having the effect to deprive another class, however limited, of a personal or property right, is just as clearly a denial of equal protection of the laws to the latter class as if the immunity were in favor of, or the deprivation of right permitted worked against, a larger class."
>
> *Traux v. Corrigan*, 257 U. S. 312, 66 L. Ed. 254.

(p) The act, both in reference to the schedule of contributions exacted and the schedule of benefits to be paid, is entirely arbitrary because of the evidence in the case to the effect that there has never been made in Alabama any investigation or survey of any kind, nor was there available to the Legislature any statistical or actuarial information upon which it could act in any other way than mere guess work or speculation.

In contrast with the precipitate action of the Alabama Legislature in swallowing whole the provisions of the federal act, the Legislatures of New York, California, and other States have appointed commissions for the purpose of making a full study of the situation in these States, and had before them, at the time of the enactment of the law, lengthy and well considered reports of these commissions.

(q) Emphasizing the total lack of test or experience upon which the Legislature could act, and also further illustrating the arbitrary provisions of the act as against the employer, we refer the Court to Section 4 (c) which recognizes the necessity and fairness of a merit test of some kind in determining the amount of contributions to be exacted by a law of this kind. As we have previously

called to the Court's attention, the Supreme Court in the Alton Case reviewed its decision on the constitutionality of the Washington Workmen's Compensation Act (*Mountain Timber Co. v. Washington*, 243 U. S. 219), and pointed out that the act classified employers in each industry and fixed rates accordingly in order to equate the burden in accordance with the risk. The Court then said:

> "The Railroad Retirement Act, on the contrary, makes no classification, but, as above said, treats all the carriers as a single employer, irrespective of their several conditions."

Section 4 (c) of the Alabama act attempts to provide for the basing of rates beginning with the year 1941 on a benefit experience, and attempts to give to the Commission the right to name the rates provided the minimum contribution shall not be less than one and one-half per centum or more than four per centum of the employer's pay roll. We submit that this makes no provision for any true merit rating for, from January 1, 1938, when benefits become payable, to 1941, the contributions of all employers and employees, regardless of merit in maintaining employment, will be used to pay benefits regardless of responsibility for unemployment; whereas, the classification which the Court intimated in the *Alton* case as having saved the pooling plan of the Washington Compensation Law was in effect from the outset of the application of the Compensation Law.

It might be argued that the law may provide for a certain test period in order that employes could be properly classified on the basis of their established records of employment. A statute must be constitutional when enacted and from the beginning. There can be no five-year period of suspended animation. However, the em-

ployer with a good record will not receive retroactively the benefit of the excess of the amount which he, from 1936 to 1941, will have paid to the fund over the benefits paid out to his employees. The record of employment which an employer establishes in that period and which may entitle him to a lower rate classification will only serve as an index of the rate he will pay in the future. Therefore, the Alabama act, which, up to 1941, pools all the contributions of all employers, regardless of their respective records of employment, cannot be justified as consistent with due process. Furthermore, the merit rating provision of the state act provides that in any event an employer, after 1941, must pay at the rate of one and one-half per centum, regardless of a record which at the time shows a safe and proper reserve in his favor.

Again, inasmuch as the act does not provide for individual reserves, some part of the money contributed by some employers will pay for benefits to the employees of others, and, similarly, employees will be contributing to the payment of benefits to other employees.

The constitutional objection from the standpoint of the employe and employer to the pooled fund provided by the state act, is stated in the Supreme Court's comment in the *Alton* case on a similar objection to the pooled Pension Fund of the Railroad Retirement Act:

> "There is no warrant for taking the property or money of one and transferring it to another without compensation, whether the object of the transfer be to build up the equipment of the transferee or to pension its employees."

(r) The act is discriminatory and arbitrary in that it makes no distinction of any kind in reference to solvent employers and their employes and employers and

their employes who become insolvent or go out of business after the act has been placed in operation.

It must be admitted that under the pooling plan some employers will go out of business and become insolvent. Yet, employes of the insolvent employer will continue to draw benefits, in some cases beyond the amount of their and their employers' contributions, from a fund to which the solvent employer's competitors continue to contribute.

At any time we may expect to find businesses on the verge of insolvency and even in the hands of receivers.[1] Under the act employes of such a business may become eligible for benefits without either the employer or the employes having made any contributions of substance to the insurance fund.

The Supreme Court, in *Railroad Retirement Board v. Alton R. Co., supra,* considered similar circumstances of disparity between contributions and withdrawals from the fund, and speaking through Mr. Justice Roberts, said:

> "The evidence shows that some respondents are solvent and others not, a situation which often may recur. The petitioners concede that the plan is intended to furnish assurance of payment of pensions to employees of all the carriers, with the result that solvent railroads must furnish the money necessary to meet the demands of the system upon insolvent carriers, since the very purpose of the act is that the pension fund itself shall be kept solvent and able to answer all the obligations placed upon it."
>
> * * * * * * * *
>
> "* * * And all the future employees of any railroad which discontinues operation must be paid

[1] A number of Alabama employers have become bankrupt since, under Court orders, they deposited their 1936 contributions to await the decision as to the state act's validity.

their pensions by the surviving roads. Again the answer of the petitioners is that the amount will be negligible. The fact that millions of dollars are involved in other features of the act will not serve to obscure this violation of due process."

(s) Employers of less than twenty-seven per cent of employes gainfully employed in Alabama are subject to the act. The remainder are excluded either as a result of specific exemptions (railroads, agriculture, etc., section 2 State Act, sections 907 and 903(a) of Federal Act). As a result of the "8 or more" or the "20 week" requirement, those employees excluded are as much or more subject to the likelihood of future employment as those included. The arbitrary double classification in Alabama is demonstrated by the following representative illustration.

Included	Excluded
Employers of 8 or more.	Employers of 7 or less.
Employers of 8 during 20 weeks.	Employers of any number (8, 80, 800, 8000) during 19½ weeks.
Employers of producers of fuel and power competing with Federal proprietary operations.	Employers of Federal proprietary operations.
Employers of labor in industry.	Employers of railway labor.
Employers of clerks and agents.	Employers of agents in the insurance business.

The double classification breaking at the arbitrary line of 8 and 20 weeks conforming precisely to the federal pattern is lacking in any constitutional basis . (See opinion in this case of court below).

(t) The application of the Act has no relationship to questions of probable unemployment, to hazards or business, to similarity of occupation, to volume of production, to need of employes as tested by past experience, or to regular or casual employment. The evidence shows that appellee has been continuously engaged in the business of mining coal since 1925; that while coal production in Alabama is of a seasonal nature and therefore its employes have been employed only on a part-time basis, that the average labor turnover of the appellee has been approximately the low figure of five per cent; that appellees employes, recruited from the farm population when not at work in the mines, have supported themselves and families with farm and garden operations and, therefore, have not become public charges or supported by relief or other funds; that appellees business in the above respects is characteristic of other coal operating companies in Alabama (Affidavit of Peter, R. 220).

Contrasted with the seasonal nature of appellee's business is that of the business of the Gulf States Paper Corporation, which has since beginning of operations been in operation continuously with no unemployment and with no reasonable expectation of unemployment in the future Affidavit of Warner, R. p. 230); another coal operating company having instituted and perfected the use of its lands under the guidance of an expert agriculturist, with free use of cultivating machinery and seeds, with a cooperative system of raising hogs and cattle and canning fruits and vegetables, has so escaped any evils of unemployment as to enable its employes and their families to live well through the depression without receiving any assistance of any kind from the Federal Government or relief agencies (Affidavit Fulghum, R. p. 214); evidence relating to a textile mill (Affidavit Little, R. p. 208);

a wholesale hardware and supply house (Affidavit Childers, R. p. 255); a large manufacturer of steel products (Affidavit Forsyth, R. p. 226); a life insurance company[1] (Affidavit Wellman, R. p. 258); a public utility company whose employees are included within the terms of the Act, while those of the Tennessee Valley Authority, a governmental agency, are excluded (Affidavit Jackson, R. p. 67); and a large manufacturer of automobile tires (Affidavit Craigmile, R. p. 231) all furnish illuminating and illustrative evidence of the unreasonable, arbitrary and capricious provisions of the two acts.

In the above summary of the discriminatory or arbitrary or capricious features of the state act we have given consideration to such features as they effect both employer and employe. As was the case when considering the state act as being violative of the 14th Amendment, its discriminatory and capricious features as marked and as arbitrary as they are in reference to employers, are much more striking in reference to employes. We call particular attention to the language of section 4(d). When the federal patterned law reached Alabama the only substantial change made in the model was the addition to section 4 of section 4(d). The language of 4(d) is almost identical with the language of section 801 of the federal act which imposed an *income tax* upon the individual employe. It is evident, however, that the draftsman of 4(d) overlooked section 811 of the federal act which placed a reasonable limit upon the amount of wages to be taxed by designating $3000.00 as the maximum wage upon which the tax is imposed. Only a few other states have imposed this tax on employes and

[1]Probably through the energy of some insurance agent in the Legislature, the Alabama Act (Section 2, Par. 6, R. p. 55) departs from the double classification in exemption by excluding insurance agents and solicitors. No one can supply a reason as to why solicitors of insurance should be exempt from the Act and solicitors for the sale of real estate and many other products should be included.

these states did not commit this error. The Massachusetts law, for illustration, provides that "only those employes employed at a rate of wage of less than $50.00 a week or $2500.00 a year will contribute and receive benefits". The state act without limitation imposes the tax on the wages of the individual employe and left the amount of the tax unlimited and imposed upon the entire wage, whether the wage amounts to $1.00 or to $50,000.00; thus, an employe receiving $10,000.00 a year in 1937 will pay 1 per cent, or $100.00 a year, but he cannot receive more than $15.00 a week for a limited number of weeks. As the earnings of the employe go beyond $10,000.00 a year, this disparity increases.

Proposition V.

THE STATE ACT IS IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES BECAUSE IT INTERFERES WITH THE RIGHT OF FREE CONTRACT OF BOTH EMPLOYERS AND EMPLOYEES.

The state act interferes with the right of free contract of both employer and employes. The buying and payment of insurance is clearly a matter of private contract. Under the federal law a citizen who prefers the annuity of a private insurance company is compelled to purchase one from the Federal Government whether he wishes it or not.

An employe under the state act is compelled to buy unemployment compensation insurance although he may have wisely provided out of his wages and out of his property for such a contingency; or although he might be so encumbered with debts or a family as not to be able to pay for the so-called unemployment insurance;

or although his employer may without cost to him have provided a more adequate pension free of bureaucratic administration. The Alabama employe may have more confidence in his own management, or the management of some one selected by him, of his property than in bureaucratic national control.

The Alabama employe who has always been regularly employed in an all-year employment may be bitterly opposed to contributing to a fund which in all probability will support a casual employe of a seasonal occupation; or he may be opposed to having his contract for compensation (the evidence discloses that in some instances there were in existence at the time the 1936 exactions became due unexpired contracts fixing compensation, R. 214) changed by requiring him to accept a sum less than the amount stipulated by the contract. For this and many other reasons the state act constitutes an interference with the freedom of contract.

The right of a citizen to be free from interference of this character by either the State or the Federal Government is well established.

> *Allgeyer v. La.*, 165 U. S. 578;
> *Adair v. United States*, 208 U. S. 161;
> *Coppage v. Kansas*, 236 U. S. 1;
> *Atkins v. Children's Hospital*, 261 U. S. 525;
> *Wolf Packing Co. v. Court of Industrial Relations*, 262 U. S. 522.

It has been generally recognized that voluntary industrial pensions are mere gratuities. In *Lynch v. United States*, 292 U. S. 571, 576-577, the court declared:

> "War Risk Insurance, while resembling in benevolent purpose pensions, compensation allowances, hospital and other privileges accorded to former members of the army and navy or their dependents,

differs from them fundamentally in legal incidents. Pensions, compensation allowances and privileges are gratuities. They involve no agreement of parties; and the grant of them creates no vested right. The benefits conferred by gratuities may be redistributed or withdrawn at any time in the discretion of Congress (Citing authorities). On the other hand War Risk policies, being contracts, are property and create vested rights."

Never before has there been a statute, federal or state, which undertook to impose upon any industry or business, even though affected with a public use, the obligation to pay pensions. Obviously, a pension law either prescribes a naked gratuity, which of course would be invalid, or it provides something in the nature of additional compensation for work done, but payable after and extending beyond the period of employment. This act is most analogous to those which have undertaken to fix wages cited above. *But this statute goes much further for it does not apply until after the employment relationship has been terminated.*

Proposition VI.

WHILE STATES ARE PROPERLY GIVEN WIDE LATITUDE IN THE EXERCISE OF THE POLICE POWER, THIS POWER MUST ALWAYS BE EXERCISED IN SUBORDINATION TO THE PROVISIONS OF THE FEDERAL CONSTITUTION.

Lakeshore & M. S. R. Co. vs. Smith, 173 U. S. 684;
Pennsylvania Coal Co. v. Mahon, 260 U. S. 393.

It has always been held that the police power of the state is limited by the provisions of the federal constitu-

tion. We believe we have demonstrated in this brief, under each of the points discussed, that the state act is in violation of the Fourteenth Amendment to the Constitution of he United States. This being true, the umbrella of the police power of the state is not sufficiently broad to protect the unconstitutionality of the state act.

Proposition VII.

THE AUTHORITIES CITED BY APPELLANTS DO NOT SUSTAIN (a) THE VALIDITY OF THE FEDERAL ACT; (b) THE VALIDITY OF THE STATE ACT.

As stated in the beginning of this brief, it has been prepared in advance of receiving appellants' brief. We have, in discussing the propositions asserted by appellants, referred to many cases which we feel confident will be relied upon by appellants. Should it be necessary, after receiving appellant's brief, to refer to any additional authorities there cited, we will ask the indulgence of the Court to file a reply brief.

Conclusion.

It is respectfully submitted that the decree appealed from should be affirmed.

Respectfully submitted,

BORDEN BURR,
NEIL P. STERNE,
MARION RUSHTON,
Attorneys for Appellee.

BENNERS, BURR, MCKAMY, & FORMAN,
KNOX, ACKER, STERNE & LILES,
RUSHTON, CRENSHAW & RUSHTON,
Of Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1936.

No. 724.

ALBERT A. CARMICHAEL, as Attorney General of the State of Alabama, et al., *Appellants*,

v.

THE SOUTHERN COAL AND COKE COMPANY, *Appellee*.

No. 837.

CHARLES C. STEWARD MACHINE COMPANY, *Petitioner*,

v.

HARWELL G. DAVIS, Individually and as Collector of Internal Revenue, *Respondent*.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

REPLY BRIEF FOR APPELLEE IN CAUSE NO. 724 AND PETITIONER IN CAUSE NO. 837.

BORDEN BURR,
WALTER BOULDIN,
WILLIAM LOGAN MARTIN,
NIEL P. STERNE,
Counsel for said Appellee and Petitioner.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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POINT I.

FLORIDA v. MELLON, 273 U. S. 12, IS NOT AUTHORITY FOR THE ACTION OF CONGRESS IN ENACTING THE SOCIAL SECURITY STATUTE.

(a) The drawback statute considered in *Florida* v. *Mellon* was a genuine withdrawal of one sovereign from a field where double taxation was a serious evil.

Death duties were known to the Roman law. The States had imposed such duties since their creation. Congress had

imposed a legacy tax as early as 1797, Act of July 6, 1797, c. 11, 1st Stat. 527. It was felt that the State as the regulator of successions and inheritances was the proper sovereign to impose such taxes, and traditionally the Congressional tax had been employed mainly to redress emergency impairments of finance. At the time of the enactment dealt with in *Florida* v. *Mellon*, forty-five States were imposing inheritance taxes.

In reporting the bill which eventually became the Revenue Act of 1926, Federal Estate Tax, Section 301, the Committee quoted the following statement of Senator Simmons, reporting the 1917 bill:

> "On the other hand, as a permanent measure, such a tax, even at the rates already fixed by existing law, trenches in considerable degree on a sphere which should be reserved to the States."

The 1926 report then continued:

> "The Committee agrees with the statement of its then Chairman, made in 1917. This is peculiarly a form of taxation which should be within the province of the several states to such extent as they upon their own volition of choice desire to exercise it." Senate Report No. 52, 69th Congress, 1st Session, page 8.

In the instant matter, taxation of the field in question was practically unknown. Double taxation, therefore, neither existed nor was anticipated.

(b) By the statute dealt with in *Florida* v. *Mellon*, the partial withdrawal from the estate tax field was unconditional. The instant enactment is conditioned upon the States' compulsive adoption of a colossal fiscal and sociological system with delegation to Congress of control over inalienable State functions.

POINT II.

ARTICLE I, SECTION 8, CLAUSE 1, OF THE CONSTITUTION DOES NOT AUTHORIZE THE EXERTION OF THE TAXING POWER IN ORDER TO COMPEL THE STATES TO SET UP RESERVES WHICH WILL HAVE THE EFFECT OF LESSENING APPLICATIONS FOR CONGRESSIONAL AID IN FUTURE DEPRESSIONS.

The tremendous expenditures by the Federal Government to alleviate the recent depression, no matter how commendable and no matter how badly needed, were voluntary. If they were authorized at all under the Constitution, it is because there must be in every Constitution an implied power of self-preservation. The duty to provide indigent relief in normal as well as in depressed times is a duty of the States, and Congress is not empowered to tax and appropriate for relief of individuals except where the States cannot and the Federal Government is confronted with an actual, presently existing emergency involving real danger to the Government and its citizens. Congress cannot, in speculation that such a situation may arise in the future, tax and appropriate, or take over State functions in an attempt to forestall or make provision for such a future possibility.

POINT III.

THE PROVISION IN TITLE III OF THE SOCIAL SECURITY ACT FOR THE OPERATING EXPENSES OF STATE UNEMPLOYMENT AGENCIES IS BEYOND THE CONSTITUTIONAL POWERS OF THE FEDERAL GOVERNMENT AND ANY TAX FOR SUCH PURPOSE IS UNLAWFUL.

Title III is inescapably related to Title IX and Title IX is inoperable without Title III. Therefore, the illegal defraying of State expenses embodied in Title III is fatal to Title IX. The enunciation through Mr. Justice Catron

in the Passenger cases, 48 U. S. (7 How.) 283, "Nor has Congress power to lay taxes to pay the debts of a state" carries with it the corollaries that Congress has no right to appropriate to pay such debts, nor has Congress the right either to tax or appropriate to pay the running expenses of a State Government or any agency thereof.

"State expenses cannot be provided for by Federal taxation," Cooley on Taxation, 108. If Congress may lawfully tax or appropriate for the purpose of paying the running expenses of State unemployment commissions for the reason that the functions so administered will be promotive of prosperity and minimize relief calls upon the Federal Government in future depressions, there would seem no reason why Congress could not upon the same theory and for the same reason appropriate for the running expenses of any branch of a State government which is concerned with the economic welfare of the State. Upon such a basis, Congress would have the right to levy taxes to furnish the running expenses of State Departments of Commerce, Agricultural Departments, Bureaus of Mines, Departments of Banking, Insurance, etc. We submit manifestly Congress has not power so to provide, nor has it power to provide the operating expenses of unemployment commissions for the States.

Sections 301 and 302-a provide operating expenses for all State unemployment commissions set up under Title IX. Sections 303 (a-5) and Section 903 (a-4) provide, insofar as concerns the actual practicalities of the situation, that the moneys furnished under Title III shall be the sole source of administration expenses for State Commissions. The inhibition against using for administration moneys raised by exactions upon payrolls from every standpoint of feasibility throws the States back upon the support provided in Title III. Congress, with its knowledge of State problems of financing, must necessarily have known and intended that its inhibition against the administrative expenditure of funds raised for unemployment relief would ren-

der the States entirely dependent upon the sustenance provided in Title III.

POINT IV.

IF THE UNEMPLOYMENT FUNDS DEALT WITH IN TITLE IX ARE STATE FUNDS, CONGRESS CANNOT PRESCRIBE REGULATIONS IN RESPECT THEREOF. IF THEY ARE FEDERAL FUNDS, THE EXACTION LEVIED IN TITLE IX IS VOID AS AN EXPROPRIATION OF MONEY FROM ONE GROUP FOR THE BENEFIT OF ANOTHER.

Congress, concededly having no regulatory power over employers and employees in the several States, cannot so expropriate as a regulation of that relationship. It can never under Article I, Section 8, Clause 1, of the Constitution levy an expropriative exaction. That clause authorizes only true taxation, not expropriations from group to group under the name or guise of a tax.

> "It is inaccurate and misleading to speak of the exaction from processors prescribed by the challenged act as a tax, or to say that as a tax it is subject to no infirmity. A tax, in the general understanding of the term, *and as used in the Constitution,** signifies an exaction for the support of the Government. The word has never been thought to connote the expropriation of money from one group for the benefit of another. We may concede that the latter sort of imposition is constitutional when imposed to effectuate regulation of a matter in which both groups are interested and in respect of which there is a power of legislative regulation. But manifestly no justification can be found for it unless as an integral part of such regulation."
>
> *United States* v. *Butler*, 297 U. S. 1.

*Emphasis supplied.

POINT V.

NUMERICAL CLASSIFICATION.

The confining of this tax to employers of eight or more cannot be justified on the ground that as to the smaller groups the revenue would not justify the pursuit, because in Title VIII, although the rate of tax is no higher, employers of one to seven are taxed.

POINT VI.

THE ELIMINATION OF THE REGULATORY REQUIREMENTS OF SEC. 303 (a) AND 903 (a) WOULD NOT LEAVE A STATUTE CAPABLE OF ENFORCEMENT AS AN EXPRESSION OF CONGRESSIONAL WILL.

The elimination of these clauses would remove the heart of the Congressional plan. It would be the sheerest speculation to assume that the Act without these requirements would be in accordance with the intent of Congress. (*Carter* v. *Carter Coal Co.* 298 U. S. 238) In fact in other parts of respondent's brief these features are stressed as absolute essentials. (Respondent's brief 72-77 and 111-113.)

Respectfully submitted,

BORDEN BURR,
WALTER BOULDIN,
WILLIAM LOGAN MARTIN,
NIEL P. STERNE,
Counsel for Appellee in No. 724 and Petitioner in No. 837.

ERRATA.

(In Brief in Cause No. 724)

Page 4, second paragraph: Figure should be $7,300.00.

Page 4, third paragraph: Figure should be $3,519.17.

Page 13, third paragraph: Word "inflicted" should be "infected."

Page 17, last paragraph: The word "provisions" should be followed by "and."

Page 19, last paragraph: Word "in" should be "by."

Page 44, second paragraph: The sentence with reference to a revenue measure should be eliminated. It was correct as originally inserted in the lower court brief but became incorrect after the decision of the Supreme Court of Alabama and was brought into this brief by inadvertence.

Page 52, second line: Word "extraction" should be "exaction."

Page 63, seventh line: Following the word "action" the following words should be inserted: "but can coerce or purchase State action."

Page 80, twelfth line: Following the word "Constitution" the following should be inserted, "(except where the context plainly demanded a different connotation)".

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Nos. 724, 797

In the Supreme Court of the United States

OCTOBER TERM, 1936

ALBERT A. CARMICHAEL, APPELLANT

v.

SOUTHERN COAL & COKE COMPANY, APPELLEE

ALBERT A. CARMICHAEL, APPELLANT

v.

GULF STATES PAPER CORPORATION, APPELLEE

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ~~OKLAHOMA~~ ALABAMA.

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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In the Supreme Court of the United States

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF OKLAHOMA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

The United States is interested in the present suit for two reasons. First, the case may present the question whether the constitutionality of a federal act may be tested by making the operation of a state statute depend upon is constitutionality. Second, if the constitutionality of a federal act may be so tested, the suit may involve the question whether the Social Security Act (Act of August 14, 1935, c. 531, 49 Stat. 620, U. S. C., Supp. II, Title 42, c. 7) is within the constitutional powers of

Congress. The United States is, therefore, filing this brief *amicus curiae*.

STATEMENT

The court below, in holding unconstitutional the Alabama Unemployment Compensation Law (Act of 1935, c. 447, as amended by Acts of 1936, chs. 156, 194, 195, and Act of February 10, 1937, Spec. Sess., 1937), found it necessary to pass only upon the alleged conflict of that Act with Article I, Sec. 23, of the Alabama Constitution, and with the Fourteenth Amendment to the Constitution of the United States.

Since the decision of the court below the Supreme Court of Alabama, in *Beeland Wholesale Co.* v. *Kaufman*, decided March 17, 1936, has held that the Alabama Act did not violate the Alabama Constitution. It also decided, however, that the operation of the Alabama Act was dependent upon the validity of a portion of the Federal Social Security Act under the Federal Constitution, and, passing upon that question, held the Federal Act constitutional, and the Alabama Act, therefore, operative. It will doubtless be urged in support of the judgment below that the Alabama Act is, if not unconstitutional, at least inoperative because the Federal Act is unconstitutional.

Section 17 of the Alabama Act, as amended by the Act of April 21, 1936, c. 156, provides:

> It is expressly provided that in the event the Supreme Court of the United States shall

hold title three or title nine of the Federal "Social Security Act" approved by the President, August 14th, 1935, unconstitutional or inoperative for any reason whatsoever, then this Act shall become void, inoperative and of no effect and all payments of levies, contributions, taxes, or pay-roll deductions made hereunder and then remaining unexpended shall be returned * * *.

* * * * *

This act shall take effect immediately upon its passage and approval by the Governor.

Section 18 (b), as amended by Act of February 10, 1937 (H. B. No. 275, Governor's No. 83, Spec. Sess., 1937), provides:

If at any time the Governor shall find (1) that the provisions of this Act requiring the payment of contributions and benefits have been held invalid under the constitution of this state by the Supreme Court of this state or under the United States Constitution by the Supreme Court of the United States in such manner that any person or concern required to pay contributions under this Act might secure a similar decision; or (2) that the tax imposed by Title IX of the Social Security Act, as amended, or any other federal tax against which contributions under this Act may be credited has been amended or repealed by Congress or has been held unconstitutional by the Supreme Court of the United States, with the result that no

> portion of the contributions required by this Act may be credited against such federal tax; the Governor shall publicly so proclaim and upon the date of such proclamation the provisions of this Act requiring the payment of contributions and benefits shall be suspended.

These sections were interpreted by the Supreme Court of Alabama in the *Beeland* case, *supra*.[1] The court said:

> But the [Alabama] Act is not dependent upon action by other states, but the validity of an existing Act of Congress. Expressly made to depend upon a decision of the United States Supreme Court upholding that Act, in reality it is merely dependent upon its constitutionality. Reference is made to the decision of the United States Supreme Court because that is the only court which has the authority effectually to declare it unconstitutional. Dependence upon its decision in that respect is but dependence upon the effect of that decision. Its effect is that the Federal Act is valid or that it is invalid from the beginning. It never existed if it is declared to be unconstitutional. We see no reason why an Alabama statute may not be made to depend upon the validity of an existing act of Con-

[1] The amendments to Section 18 were enacted subsequent to the argument of the *Beeland* case, but prior to the decision. We assume that the amendments were considered by the court, although they are not referred to in the opinion.

> gress into which it is tied in a way necessary for it to have an effective field of beneficial operation for the public welfare. Such we think is the status of the Alabama Act, and it cannot be stricken down on that account.
>
> It is necessary for us to lay down the law of this suit as we understand it, and since the Alabama Act is dependent upon the constitutionality of the Federal Act, it is necessary to express our opinion as to that insofar as it affects its unemployment features, since the United States Supreme Court has not acted on it.

The Alabama Act might well have been construed to mean that it was to be operative unless and until this Court should render a decision adjudging Title IX, or perhaps also Title III, unconstitutional. The State Supreme Court has, however, construed the Act to mean that its operation, ever since its enactment, has been dependent upon the existence of a valid Federal Act, and has found the Federal Act to be valid. We submit that in this situation this Court has no occasion to pass upon the validity of either title of the Federal Act upon the present appeals.

I

THE ALABAMA SUPREME COURT HAS HELD THAT THE ALABAMA ACT IS OPERATIVE, AND THIS COURT SHOULD NOT GO BEHIND THE DECISION OF THE STATE COURT ON THAT QUESTION

This Court, of course, has *jurisdiction,* on appeals from inferior federal courts, to pass on

questions of state law as well as questions of federal law. Its *rule of decision*, however, in matters of state law is to follow the determination of the State courts. *Ex parte Worcester National Bank*, 279 U. S. 347; *Great Northern Railway Co.* v. *Sunburst Co.*, 287 U. S. 358. Accordingly, this Court will follow the ruling of the courts of the States as to whether a state statute has come into being or is presently operative. *County of Leavenworth* v. *Barnes*, 94 U. S. 70, 71; *Town of South Ottawa* v. *Perkins*, 94 U. S. 260, 268; *Post* v. *Supervisors*, 105 U. S. 667; *Wilkes County* v. *Coler*, 180 U. S. 506; *Peters* v. *Broward*, 222 U. S. 483.

Nor should this rule be departed from when the determination by the state court of the state question involves the validity of a federal statute. The question whether the law is operative is still a state question. Relief, if granted appellees on this ground, would be relief under the *state* statute, not under the Federal Constitution.

The decision in *Miller's Executors* v. *Swann*, 150 U. S. 132, is closely analogous. In that case a decision of the Supreme Court of Alabama had turned upon the proper construction of an Alabama statute authorizing the sale of certain lands which had been granted to Alabama by Congress "in accordance with the acts of Congress granting the same". The Alabama court had construed the federal acts, thus incorporated into the state law, as imposing a condition precedent to a sale. An appeal was taken to this Court upon the ground

that the acts of Congress, properly construed, did not impose such a condition. The appeal was dismissed for lack of a federal question. The Court said (pp. 136–137):

> The question is not what rights passed to the State under the acts of Congress, but what authority the railroad company had under the statute of the State. The construction of such a statute is a matter for the state court, and its determination thereof is binding on this court. *The fact that the state statute and the mortgage refer to certain acts of Congress as prescribing the rule and measure of the rights granted by the State, does not make the determination of such rights a Federal question.* A State may prescribe the procedure in the Federal courts as the rule of practice in its own tribunals; it may authorize the disposal of its own lands in accordance with the provisions for the sale of the public lands of the United States; and in such cases an examination may be necessary of the acts of Congress, the rules of the Federal courts, and the practices of the Land Department, and yet the questions for decision would not be of a Federal character. The inquiry along Federal lines is only incidental to a determination of the local question of what the State has required and prescribed. The matter decided is one of state rule and practice. The facts by which that state rule and practice are determined may be of a Federal origin. [Italics supplied.]

A similar situation was presented in *Louisville & Nashville R. R. Co.* v. *Western Union Telegraph Co.*, 237 U. S. 300, in which it was suggested by the Court that jurisdiction of the writ of error might be sustained on the ground that the act of Louisiana under which appellee operated required that it comply with an act of Congress. The Court held that the writ of error could not be sustained on that basis, saying (p. 303):

> But when, as here, the foundation of the right claimed is a state law, the suit to assert it arises under the state law none the less that the state law has attached a condition that only alien legislation can fulfill. The state law is the sole determinant of the conditions supposed, and its reference elsewhere for their fulfilment is like the reference to a document that it adopts and makes part of itself. The suit is not maintained by virtue of the Act of Congress but by virtue of the Louisiana statute that allows itself to be satisfied by that Act. See *Interstate Street Ry.* v. *Massachusetts*, 207 U. S. 79, 84.

See also *Gully* v. *First National Bank in Meridian*, 299 U. S. 109.

The ultimate fact determined by the Alabama Supreme Court on this branch of the case is that neither section 17 nor 18 of the Alabama Act renders it inoperative. We submit that in accordance with the general rule a decision of the state court upon the question whether a state statute is operative is conclusive. This fact disposes of the pres-

ent contention; and it would be immaterial even if the state court in reaching that conclusion had passed upon a question of Federal law.

The principle is also illustrated by cases in which the statute or law of one State is drawn in question in the courts of another State. Thus, in *City Bank Farmers' Trust Co.* v. *New York Central R. R. Co.*, 253 N. Y. 49, the issue was whether a transfer was taxable by the laws of Pennsylvania. The Supreme Court of Pennsylvania, in an earlier decision, had held that the Pennsylvania reciprocity provisions did not include residents of New York dying within a certain period, because the Tax Commission of New York and a New York statute had stated that the New York law did not grant a similar exemption to residents of Pennsylvania. The New York Court of Appeals, however, held the ruling of the Tax Commission to be erroneous, and the statute to be unconstitutional. But in determining the law of Pennsylvania, the court, speaking through Chief Judge Cardozo, said (p. 63):

> The judgment before us may not stand while the judgment of the Supreme Court of Pennsylvania is standing unchanged. That judgment, right or wrong, decides the whole issue. The issue is merely this: Do the laws of Pennsylvania, properly interpreted, impose a tax upon the plaintiff's shares of stock in a Pennsylvania corporation? The Supreme Court of Pennsylvania has said that they do. In reaching that conclusion it has had occasion to consider the meaning and effect of

> the statutes of New York. What it has said in that regard does not constitute its decision. What it has said in that regard is a step in the process of reasoning leading up to the decision. In the end it has determined, not the meaning and effect of the statutes of New York, but the meaning and effect of the statutes of Pennsylvania. As to that, as we have said, its authority is final.

See also *Ingenohl* v. *Olsen & Co.*, 273 U. S. 541; *Godard* v. *Gray*, L. R. 6 Q. B. 139, 151; Conflict of Laws Restatement, Section 431.

We submit, therefore, that the decision of the Supreme Court of Alabama, holding that Sections 17 and 18 of the Alabama Act do not render it inoperative, presents no question of federal law, and should not be reexamined by this Court.

II

IF THE VALIDITY OF ANY PART OF THE SOCIAL SECURITY ACT IS TO BE CONSIDERED ON THESE APPEALS, THE ISSUES IN THAT REGARD ARE NO BROADER THAN THOSE RAISED IN A SUIT FOR REFUND OF TAXES PAID UNDER TITLE IX OF THE FEDERAL ACT

If the validity of any portion of the Federal Act is to be considered on these appeals because of the construction accorded the Alabama Act by the Supreme Court of that State in the *Beeland* case, the *scope* of that review must also be limited by the decision to the validity of Title IX of the Federal Act.

The Alabama Supreme Court, in discussing the Social Security Act, referred to Title IX as the

portion of that act upon which the Alabama Act depended. Title III of the Federal Act, which makes grants-in-aid to the States for the administration of their unemployment compensation laws, was referred to, but only as to whether its validity *vel non* would affect the validity of the tax under Title IX. The Alabama Court expressly held that if, in a suit by a taxpayer under Title IX, the doctrine of *Massachusetts* v. *Mellon*, 262 U. S. 447, prevents a consideration of the substantive validity of Title III, the doctrine is equally applicable to eliminate that issue as a condition to the operation of the Alabama Act. The Court said:

> So that in respect to the question here at hand, if the appropriation is independent of the tax and tax was not laid to meet the appropriation, no question here arises as to the power of Congress to make it.

The Alabama Court did, alternatively, go forward to consider the validity of Title III. At most, however, the decision can be construed to mean that the validity of the Federal Act is involved only so far as a taxpayer under Title IX could raise questions concerning other portions of the Act in a suit for a refund of taxes paid.

III

TITLES IX AND III OF THE SOCIAL SECURITY ACT ARE VALID

As we have indicated in Point II, *supra*, if the validity of the Federal Act is in any way in issue in these appeals, the scope of the review is certainly

no broader than that which may be obtained in a suit for refund by a taxpayer under Title IX. The constitutional questions raised in such a case are discussed at length in the Brief for the Respondent in *Charles C. Steward Machine Co.* v. *Davis*, No. 837, which is to be argued immediately after the present appeals. We therefore respectfully refer the Court to that brief for our discussion of those questions.

Respectfully submitted.

HOMER CUMMINGS,
Attorney General.

STANLEY REED,
Solicitor General.

ROBERT H. JACKSON,
Assistant Attorney General.

CHARLES E. WYZANSKI, JR.,
SEWALL KEY,
A. H. FELLER,
J. P. JACKSON,
ARNOLD RAUM,
F. A. LESOURD,
Special Assistants to the Attorney General.

CHARLES A. HORSKY,
Attorney.

THOMAS H. ELIOT,
General Counsel,

ALANSON WILLCOX,
Assistant General Counsel,
Social Security board.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1936.

No. 724.

ALBERT A. CARMICHAEL et al.,
Appellants,

v.

SOUTHERN COAL & COKE COMPANY,
Appellee.

BRIEF OF AMICI CURIAE.

JOHN S. COLEMAN,
WILLIAM B. WHITE,
Attorneys for Amici Curiae.

St. Louis Law Printing Co., 415 North Eighth Street. CEntral 4477.

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BRIEF OF AMICI CURIAE.

STATEMENT.

This brief *amici curiae* is filed on behalf of certain parties which employ eight or more persons in the State of Alabama and are subject to the Unemployment Compensation Act of Alabama. They contend that the State Act and Titles III and IX of the Federal Social Security Act are unconstitutional.

Five of the parties, Stockham Pipe Fittings Company, Woodward Iron Company, Continental Gin Company, Standard Oil Company, and James B. Clow & Sons, are plaintiffs in one suit and Sloss-Sheffield Steel & Iron Company is plaintiff in another suit instituted and now pending in the United States District Court for the Middle District of Alabama, against the Attorney General of Alabama and the three members of the State Unemployment Compensation Commission, to restrain the enforcement of the State Act. The bills were not such as required the convening of a three-judge court, and the District Court granted injunctions, now in effect, enjoining the enforcement of the Act.

Eighty-two of the other parties on whose behalf this brief is filed, instituted suit against the Attorney General of Alabama and the members composing the State Unemployment Compensation Commission, in the Circuit Court of Montgomery County, Alabama, praying that the defendants be restrained from enforcing the Alabama Act on the grounds that it violated both the State and Federal Constitutions. On final hearing the Circuit Court sustained a demurrer to the bill, which judgment was affirmed by the Supreme Court of Alabama. *Talladega Ice and Storage Company et al., v. Carmichael, et al.*, (Manuscript). This case is now pending on application for rehearing.

All of the above mentioned parties, therefore, have a vital interest in the determination by this Court of the issues involved in the present cause.

LIMITED SCOPE OF THIS BRIEF.

It is not the purpose of this brief to deal with all of the questions arising under these issues, but rather, supplemental to the brief filed on behalf of Appellee, to discuss mainly the invalidity of the State Act under the due process clause of the Fourteenth Amendment, and as it is considered that the State Act is inextricably interlocked with and dependent upon Titles III and IX of the Federal Act, to also discuss the validity of these titles under the Tenth Amendment.

It is not necessary to review the provisions of the State or Federal Acts as the brief of Appellee contains a detailed analysis thereof. The provisions of the Acts which are pertinent to the points discussed herein will be considered as they arise.

POINT I.

The Exactions Imposed by the Alabama Act Constitute a Taking of Property Without Due Process of Law.

The validity of exactions of the character imposed on employers and employees by the Alabama Act has not been passed on by this Court. The Supreme Court of Alabama in *Beeland Wholesale Company v. Kaufman et al.* (Manuscript), in speaking of the validity of the State Act under the Fourteenth Amendment said: "But no decision of the United States Supreme Court is directly in point on it • • •." No decision of this Court, as we view its holdings, has held that money, whether under the guise of a tax or of police power exactions, can be taken from one class or group of citizens and distributed to another in the manner required by the present Act.

The Alabama Supreme Court upheld the provisions imposing exactions on employers and employees as a valid exercise of the State's taxing powers. In the *Beeland* opinion it was said: "They are taxes and can be justified only as such."

The situation does not here obtain of a separation of a tax levy from the appropriation provisions so as to require a separate treatment of the exercise of the taxing power and of the power to appropriate. We quote further from the *Beeland* opinion:

> "The tax we are dealing with now, the State tax, is laid for a definite purpose and the amount collected is to be put in trust to be used for no other purpose. The tax levied cannot be separated from the purpose to be accomplished, and the resulting benefits to the employer class generally."

Cf. *Turnipseed et al. v. Blan*, 226 Ala. 549, 148 So. 116, which holds that a taxpayer may enjoin a state officer from unlawfully disbursing state funds.

It therefore follows that if the State of Alabama is levying a tax, the proceeds of which are to be unlawfully expended, a taxpayer may successfully resist the imposition even though the levy purports to be made under the general power to tax.

Section 93 of the Alabama Constitution provides that the State shall not lend its money or credit to any individual, association or corporation. This provision has been construed as preventing payments or bounties to individuals or classes of individuals who have no particular claim against the State. The following cases construe Section 94 of the State Constitution, which is similar to

Section 93, except that Section 94 applies to counties and cities:

Board of Revenue of Mobile County v. Puckett, 227 Ala. 374, 149 So. 850;
Garland v. Board of Revenue of Montgomery County, 87 Ala. 227, 6 So. 403;
Southern Railway v. Hartshorne, 162 Ala. 491, 50 So. 139;
Griffin v. Jeffers, 221 Ala. 649, 130 So. 190;
Stone v. State, 223 Ala. 426, 136 So. 727.

It is of course clear that monies raised by the State under its taxing powers are public revenues and can only be used for public purposes. It matters not that the proceeds of the levy are specifically appropriated. Such levy must be for a public use as contradistinguished from a private use or purpose. As we interpret the opinion in the *Beeland* case, the tax is sustained because the amounts collected are devoted to a public purpose, and not because the parties taxed receive equivalent reciprocal benefits.

Whether a tax is levied for a public purpose is a judicial question. We quote from Cooley on Taxation, Volume 1, Fourth Edition, at page 212, as follows:

> "It is the first requisite of lawful taxation, that the purpose for which it is laid shall be a public purpose. The decision to lay a tax for a given purpose involves a legislative conclusion that the purpose is one for which a tax may be laid; in other words, is a public purpose. But the determination of the legislature on this question is not, like its decision on ordinary questions of public policy, conclusive either on the other departments of the government, or on the people. The question, what is and what is not a public purpose, is one of law; and though unquestionably the legislature has large discretion in selecting

the object for which taxes shall be laid, its decision is not final."

The attempted enforcement of a tax imposed under an invalid law violates the due process clause. We quote from Cooley on Taxation, Volume 1, Fourth Edition, at page 305, as follows:

> "First, it would seem that a tax for a private as distinguished from a public purpose violates the due process clause."

We also quote from 61 Corpus Juris, 159:

> "Since the taxing power must be exercised for a public purpose, failure to comply with this requisite has been held a violation of the guaranty of due process of law."

The payment of benefits under the Alabama Act to the unemployed is not sustained under the principle of poor relief. We quote from the opinion in the *Beeland* case:

> "Under such circumstances, the State is not dependent upon section 88, Constitution, to help the poor."

It is clearly evident that the appropriation for the payment of benefits to idle employees in certain industrial or business occupations regardless of the condition or need of such employees could not have been justified as a valid exercise of the power to provide relief for the indigent. The State Act makes no distinction between the right of the affluent unemployed and the right of the destitute unemployed to receive benefits from the unemployment fund created by the levy held to be under the general taxing powers.

Certainly, unemployed persons who formerly worked for

salaries or wages have no more claim to special consideration in the way of public bounties than unemployed doctors, preachers, lawyers, blacksmiths or draymen who have not been deriving their sources of income from a master and servant relationship, or those who, by reason of physical disabilities or other causes, never held jobs.

Is there any more duty or obligation on the part of the State to pay the unemployed who have been engaged in industrial or business occupations, than the unemployed who have worked for farmers and who are excluded under the Act as recipients of benefits? It is true that neither farmers nor their employees are subject to the tax, but it has never been considered that a taxpayer who pays taxes levied under general revenue powers is by virtue of this fact entitled to preferential treatment in the disbursement of the tax proceeds.

It may be contended that because the State provides benefits for only a portion of the unemployed, that the Act is not rendered void because of the fact that it fails to provide for all of the unemployed. But can the State, consistent with due process, levy a tax and single out a selected class for bounties payable from the tax proceeds, to whom it owes no legal or moral obligation, and exclude others equally as deserving?

The citizens support the State and not the State the citizens. There is no duty on the part of the State to provide employment and it cannot assume the responsibilities of reimbursing the unemployed because of their lack of employment.

Whether levies of the character exacted by the State Act are sought to be justified under the general powers of taxation or under its police powers as imposing exactions only on those who receive equivalent benefits, this

Court has never held that a scheme such as the present one is valid. The cases which appear to be most cited by those who would sustain the legality of this type of legislation are:

Mountain Timber Company v. State of Washington, 243 U. S. 219, 61 L. Ed. 685;
Noble State Bank v. Haskell, 219 U. S. 104, 55 L. Ed. 112,

and the *Head Money Cases—Edye v. Robertson*, 112 U. S. 580, 28 L. Ed. 798. It is respectfully submitted that when these cases are analyzed, they by implication, at least, condemn rather than sanction levies like the present State Act.

It appears from the *Mountain Timber Case*, that the State of Washington had adopted a compulsory Workmen's Compensation Act, which provided for a fund for compensation of workmen injured in hazardous employment. The hazardous industries were classified so that the employees subject to the Act were required to contribute according to the hazard involved in their particular industry. One class of employers did not have to contribute to the fund created for employees injured while working in a separate kind of work. The Act established forty-seven different classes of employment and the rates of contribution varied from 1½% for some classes to 10% for the most hazardous classes. The Supreme Court quoted in italics in its opinion the following provisions of the Act:

> "In that the intent is that the fund created under this section shall ultimately become neither more nor less than self-supporting, exclusive of the expense of administration, the rates in this section named are

subject to future adjustment by the legislature, and the classifications to rearrangement following any relative increase or decrease of hazard shown by experience."

We quote further from the opinion, as follows:

"The percentages seem to be high; but when these are taken in connection with the provisions requiring accounts to be kept with each industry in accordance with the classification, and declaring that no class shall be liable for the depletion of the accident fund from accidents happening in any other class, and that any class having sufficient funds to its credit at the end of the first three months or any month thereafter is not to be called upon, it is plain that, after the initial payment, which may be regarded as a temporary reserve, the assessments will be limited to the amounts necessary to meet actual losses."

Further on, the opinion says:

"We are unable to discern any ground in natural justice or fundamental right that prevents the state from imposing the entire burden upon the industries that occasion the losses."

The vital differences between the Washington Act considered in the above case and the Alabama Unemployment Compensation Act are plainly apparent. The Washington Act, instead of making virtually all employers and employees subject to the Act, selected those which were considered to be engaged in hazardous industries, but stronger still, the employers in one class of hazardous industry did not have to contribute to the employees of another class. Under the Alabama Act, all employers and employees, except the comparatively few exempted by the Act, are grouped together and required to contribute at the same

rate to a common pooled fund. Hazardous and non-hazardous enterprises and occupations having much unemployment and occupations having no unemployment bear the same rate of tax, and the less unemployment an industry has, the greater is its tax burden. This is just the opposite of the Washington Act which required the class of industry having the greatest accident toll to make the largest contribution. As clearly pointed out in the opinion in the *Mountain Timber* case, the industries that occasioned the losses bore the brunt of the burden. Employers who keep their employees at work are certainly not the ones who are contributing to unemployment, but, under the Alabama Act, only the industries who have employment contribute to the unemployed. The features of the Washington Act pointed out in the opinion in the *Mountain Timber* case seem to us to clearly indicate why the Alabama Act is invalid. Even with the distinguishing features carefully pointed out by the majority of the Court in this case, Mr. Chief Justice White, Mr. Justice McKenna, Mr. Justice Van Devanter and Mr. Justice McReynolds dissented.

Mr. Justice Roberts in the opinion in *Railroad Board v. Alton R. Company,* 295 U. S. 330, 79 L. Ed. 1468, clearly analyzes the holding in the *Mountain Timber* case. We quote excerpts from the opinion as follows:

> "It is claimed that several other decisions confirm the legality of the pooling principle, when reasonably applied. For this position petitioners cite Mountain Timber Co. v. Washington, 243 U. S. 219, 61 L. ed. 685, 37 S. Ct. 260, Ann. Cas. 1917 D, 642, 13 N. C. C. A. 927; Noble State Bank v. Haskell, 219 U. S. 104, 55 L. ed. 112, 31 S. Ct. 486, 32 L. R. A. (N. S.) 1062, Ann. Cas. 1912 A, 487, and Thornton v. Duffy, 254 U. S. 361, 65 L. ed. 304, 41 S. Ct. 137. In the first of these

the Washington workmen's compensation act, which required employers in extra-hazardous employment, to pay into a state fund certain premiums based upon the percentage of estimated pay roll of the workmen employed, was under attack. For the purpose of payments into the fund accounts were to be kept with each industry in accordance with a statutory classification, and it was definitely provided that no class should be liable for the depletion of the accident fund by reason of accidents happening in any other class. The act therefore clearly recognized the difference in drain or burden on the fund arising from different industries and sought to equate the burden in accordance with the risk. The challenge of the employers was that the statute failed of equitable apportionment as between the constituted classes. But no proof was furnished to that effect, and this court assumed that the classification was made in an effort at fairness and equity as between classes. The Railroad Retirement Act, on the contrary, makes no classification, but, as above said, *treats all the carriers as a single employer, irrespective of their several conditions.*

• • • • • • •

"We conclude that the provisions of the Act which disregard the private and separate ownership of the several respondents, treat them all as a single employer, and pool all their assets regardless of their individual obligations and the varying conditions found in their respective enterprises, cannot be justified as consistent with due process." (Emphasis supplied.)

In the *Head Money* cases this Court sustained a Congressional Act levying on shipowners a fee of fifty cents for each foreign citizen brought by them into the United States, on the ground that the imposition was a valid ex-

ercise by Congress of its power to regulate immigration. The due process clause does not seem to have been mentioned or considered in the opinion. It was held that the exaction was not under the taxing power. We quote from the opinion:

> "But the true answer to all these objections is, that the power exercised in this instance is not the taxing power.
>
> • • • • • • •
>
> "The sum demanded of him is not, therefore, strictly speaking, a tax or duty within the meaning of the Constitution."

It has been held by this Court that no state has the right to take, without adequate compensation, the property of one person and give it to another. When property is taken without the owner's consent, it must be devoted to a public purpose. In this connection we call attention to the following excerpt from *Loan Association v. Topeka*, 20 Wall. 655, 22 L. Ed. 455:

> "The power to tax is, therefore, the strongest, the most pervading of all the powers of government reaching directly or indirectly to all classes of the people. It was said by Chief Justice Marshall, in the case of McCulloch v. Md., 4 Wheat. 431, that the power to tax is the power to destroy. A striking instance of the truth of the proposition is seen in the fact that the existing tax of ten per cent imposed by the United States on the circulation of all other banks than the National Banks, drove out of existence every state bank of circulation within a year or two after its passage. This power can as readily be employed against one class of individuals and in favor of another, so as to ruin the one class and give unlimited wealth and

prosperity to the other, if there is no implied limitation of the uses for which the power may be exercised.

"To lay, with one hand, the power of the government on the property of the citizen, and with the other to bestow it upon favored individuals to aid private enterprises and build up private fortunes, is none the less a robbery because it is done under the forms of law and is called taxation. This is not legislation. It is a decree under legislative forms."

In *Cole v. City of La Grange*, 113 U. S. 1, 28 L. Ed. 896, it was stated:

"The general grant of legislative power in the Constitution of a State does not enable the Legislature, in the exercise either of the right of eminent domain or of the right of taxation, to take private property, without the owner's consent, for any but a public object. Nor can the Legislature authorize counties, cities or towns to contract, for private objects, debts which must be paid by taxes. It cannot, therefore, authorize them to issue bonds to assist merchants or manufacturers, whether natural persons or corporations, in their private business. These limits of the legislative power are now too firmly established by judicial decisions to require extended argument upon the subject."

If a conglomerate mass of taxpayers can be forced to contribute to a fund to provide payments for a selected class who become unemployed, then it would appear that all citizens can be made to contribute for the benefit of all the unemployed, and this, regardless of the condition or state of circumstances of the beneficiaries of the grants. If such schemes are constitutional, we respectfully submit that under the same principle all persons acquiring mortgages and also the mortgagors, could be required to

contribute to a common fund to enable insolvent mortgagors to pay their indebtednesses.

The extent to which legislative power of this kind might be extended, if legal, is only limited by one's range of imagination.

An independent income to individuals, or to numbers of individuals, no doubt contributes to the welfare of the state and to its citizens, but this condition of affairs cannot be legally accomplished by the state by its forcibly taking property from some of its citizens and giving it to others, whether such taking is done in the form of taxes, police powers, or through other means.

POINT II.

Titles III and IX of the Federal Social Security Act are Violative of the Tenth Amendment.

While this case deals primarily with the State Act, yet the terms of the Act make it dependent upon the validity of Titles III and IX of the Federal Act. This dependency was recognized by the Alabama Supreme Court in its opinion in the *Beeland* case. We, therefore, think it appropriate to briefly discuss in this brief the constitutionality of the above mentioned sections of the Federal Act.

If the conclusion reached by the Alabama Supreme Court in the *Beeland* case is correct, then the matter of unemployment is one within the sphere of the State. This is certainly true insofar as unemployment arises out of intrastate relationships. It is elementary that the same power cannot exist in both the State and Federal Governments. The existence of power in one government negatives it in another.

In *Hammer v. Dagenhart*, 247 U. S. 251, 62 L. Ed. 1101, this Court stated the well established principle in the following language:

> "The maintenance of the authority of the states over matters purely local is as essential to the preservation of our institutions as is the conservation of the supremacy of the Federal power in all matters intrusted to the nation by the Federal Constitution.
>
> "In interpreting the Constitution it must never be forgotten that the nation is made up of states, to which are intrusted the powers of local government. And to them and to the people the powers not expressly delegated to the national government are reserved."

In *Bailey v. Drexel Furniture Company*, 259 U. S. 20, 66 L. Ed. 817, all the members of the Court, except Mr. Justice Clarke, were of the opinion that child labor within the states could not be regulated by penalties adopted by Congress in the guise of a tax. Mr. Chief Justice Taft said:

> "In the light of these features of the act, a court must be blind not to see that the so-called tax is imposed to stop the employment of children within the age limits prescribed. Its prohibitory and regulatory effect and purpose are palpable. All others can see and understand this. How can we properly shut our minds to it?
>
> "It is the high duty and function of this court in cases regularly brought to its bar to decline to recognize or enforce seeming laws of Congress, dealing with subjects not intrusted to Congress, but left or committed by the supreme law of the land to the control of the states. We cannot avoid the duty even though it require us to refuse to give effect to legislation designed to promote the highest good. The good

> sought in unconstitutional legislation is an insidious feature because it leads citizens and legislators of good purpose to promote it without thought of the serious breach it will make in the ark of our covenant, or the harm which will come from breaking down recognized standards. In the maintenance of local self-government, on the one hand, and the national power, on the other, our country has been able to endure and prosper for near a century and a half."

The ingenious argument has been made that as the taxes levied in Title IX of the Federal Act are imposed under the general taxing powers of the United States, no one can question the validity of the exactions. It is further contended that as Title III deals only with appropriations, the constitutionality of these provisions cannot be attacked under the principles laid down in *Mass. v. Mellon,* 262 U. S. 447, 67 L. Ed. 1078. This argument wholly ignores the comprehensive plan and the results sought to be accomplished, all of which are plainly apparent upon even a casual examination of the provisions.

The 90% credit allowed on the Federal tax for payments made into a state unemployment fund under a state law is expressly conditioned upon the approval by the Federal Social Security Board of the state law in its entirety. There are many specific mandatory requirements to which the State Act must conform. The immediate turning over by the State to the Federal Government of all amounts collected under its statute is compulsory and is one of the prime requisites for the allowance of credit by its citizens on the Federal levy. Should the State later change its law so that it no longer, in the opinion of the Federal Board, contains the provisions specified in Section 903, or if the State officials fail to comply with the provisions of this section, the previous Federal approval of the

State Act is withdrawn. [Paragraph (b) of Section 903.]

Section 303 of the Act provides, among other things, that no part of the amounts appropriated in Title III shall be paid to any state which does not immediately pay all monies received in its unemployment fund to the Secretary of the Treasury, or if the Federal Board finds that the State agency charged with the enforcement of the State Act is failing to comply with the requirements specified in paragraph (a) of that section, no further payments are made to the State.

The pattern for the form and content of the State Act and the manner of its enforcement could not for all practical purposes have been more effectively accomplished if Congress had provided an exact model, from which no deviation was permitted. It is true the Federal Act requires no levy on employees for unemployment benefits, but that does not change or alter the dominant purpose of Congress that the States must tax the employers at the rate determined by Congress or else suffer the consequences of having large numbers of its citizens subjected to a penalty equivalent to nine-tenths of one per cent of their pay rolls.

Looking at the true situation as it existed after the passage of the Federal Act, can anyone seriously assert that the states were left to their free and untrammeled option as to whether they would adopt a standard unemployment insurance system to be administered under the supervision and control of Federal agencies? A state can very often be just as effectively coerced through pressure applied on the pocketbooks of its citizens as by bayonets.

This Court is not supposed to be blind to what everyone else knows. The purpose of the tax considered in the Child Labor Tax case, supra, was not any more clearly

manifested than is the dominant motive revealed by Titles III and IX. "The voice is Jacob's voice, but the hands are the hands of Esau."

The state evidently recognizes that from a practical point of view it has very little to do with the scheme of unemployment insurance, except to administer the minor details of the plan. The state agency officials are in effect merely provincial satraps. That Alabama is willing to throw the whole undertaking overboard if the Federal Act ceases to be operative is manifested by the provision that the Act shall cease to be effective if this Court finds the Federal measure unconstitutional.

The fact that the provision providing for the turning over of funds to the states for administering the scheme is contained in Title III and the provision for the Federal tax and the credits thereon is skipped to Title IX cannot operate to prevent a consideration of the respective provisions in conjunction with each other. Both provisions are contained in the same Act and are just as much related to each other as if numbered consecutively or, for that matter, if contained in separate acts. The coercive features of Title IX are, we respectfully submit, sufficient to render that part of the Act void if consideration of Title III is omitted or precluded. Title III only emphasizes the extent of the coercion exerted on the states.

Mr. Justice Roberts, speaking for this Court in *United States v. Butler*, 297 U. S. 1, 80 L. Ed. 447, said:

> "It is said that what the respondents are endeavoring to do is to challenge the intended use of the money pursuant to Congressional appropriation when, by confession, that money will have become the property of the Government and the taxpayer will no longer have any interest in it. Massachusetts v. Mellon, 262

U. S. 447, 67 L. ed. 1078, 43 S. Ct. 597, is claimed to foreclose litigation by the respondents or other taxpayers, as such, looking to restraint of the expenditure of government funds. That case might be an authority in the petitioners' favor if we were here concerned merely with a suit by a taxpayer to restrain the expenditure of the public moneys. It was there held that a taxpayer of the United States may not question expenditures from its treasury on the ground that the alleged unlawful diversion will deplete the public funds and thus increase the burden of future taxation. Obviously the asserted interest of a taxpayer in the federal government's funds and the supposed increase of the future burden of taxation are minute and indeterminable. But here the respondents who are called upon to pay moneys as taxes, resist the exaction as a step in an unauthorized plan. This circumstance clearly distinguishes the case. The Government in substance and effect asks us to separate the Agricultural Adjustment Act into two statutes, the one levying an excise on processors of certain commodities, the other appropriating the public moneys independently of the first. Passing the novel suggestion that two statutes enacted as parts of a single scheme should be tested as if they were distinct and unrelated, we think the legislation now before us is not susceptible of such separation and treatment."

We quote further from the opinion as follows:

"The power of taxation, which is expressly granted, may, of course, be adopted as a means to carry into operation another power also expressly granted. But resort to the taxing power to effectuate an end which is not legitimate, not within the scope of the Constitution, is obviously inadmissible.

• • • • • • •

"In Linder v. United States, 268 U. S. 5, 69 L. ed. 819, 45 S. Ct. 446, 39 A. L. R. 229, supra, we held that the power to tax could not justify the regulation of the practice of a profession, under the pretext of raising revenue. In United States v. Constantine (decided December 9, 1935) (296 U. S. 287, ante, 233, 56 S. Ct. 223), we declared that Congress could not, in the guise of a tax, impose sanctions for violation of state law respecting the local sale of liquor. These decisions demonstrate that Congress could not, under the pretext of raising revenue, lay a tax on processors who refuse to pay a certain price for cotton and exempt those who agree so to do, with the purpose of benefiting producers."

In *Schechter v. United States*, 297 U. S. 495, 79 L. Ed. 1570, this Court said:

"Stress is laid upon the great importance of maintaining wage distributions which would provide the necessary stimulus in starting 'the cumulative forces making for expanding commercial activity.' Without in any way disparaging this motive, it is enough to say that the recuperative efforts of the Federal Government must be made in a manner consistent with the authority granted by the Constitution.

"We are of the opinion that the attempt through the provisions of the Code to fix the hours and wages of employes of defendants in their intrastate business was not a valid exercise of Federal power."

See also *Carter v. Carter Coal Company*, 298 U. S. 238, 80 L. Ed. 1160, and *Ashton v. Cameron County*, 298 U. S. 513, 80 L. Ed. 1309.

CONCLUSION.

Realizing the tremendous responsibility placed on this most Honorable Court, we, with great deference, submit

our views on the important issues involved in the litigation.

May we not respectfully submit that the reasoning adopted by the Privy Council in The Attorney General of Canada v. The Attorney General of Ontario and others, also applies with extraordinary force here?

Respectfully submitted,

JOHN S. COLEMAN,
WILLIAM B. WHITE,
Attorneys for Amici Curiae.

See # 724 for add'l brief

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 797

ALBERT A. CARMICHAEL, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE STATE OF ALABAMA, ET AL., APPELLANTS,

vs.

GULF STATES PAPER CORPORATION

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA

FILED MARCH 10, 1937.

SUPREME COURT OF THE UNITED STATES

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IN UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA

In Equity

GULF STATES PAPER CORPORATION, a Corporation, Plaintiff,

vs.

ALBERT A. CARMICHAEL, Individually and as Attorney General of the State of Alabama, et al, Defendants

AMENDED BILL OF COMPLAINT—Filed November 6, 1936

And now comes the plaintiff and by leave of court first had and obtained, amends the original bill of complaint filed herein and the prayer thereof by striking out the entire original bill of complaint and substituting in lieu thereof the following:

To the Honorable the Judge of the District Court of the United States for the Middle District of Alabama, Sitting in Equity:

The amended bill of complaint of Gulf States Paper Corporation, a corporation of the State of Delaware, respectfully represents:

(1) This suit is instituted on behalf of the plaintiff and all other employers of labor within the State of Alabama who are subjected by its terms to the provisions of an Act of the Legislature of Alabama approved September 14, 1935, known as the Alabama Unemployment Compensation Law, as amended *, who may become parties plaintiff hereto or be permitted to intervene herein. Plaintiff is and since the year 1928 has been a corporation of the State of Delaware duly qualified to transact business within the State of Alabama, and engaged in the manufacture of kraft paper at an extensive plant located in Tuscaloosa County, Ala-

* Act No. 447 (S. 395), Acts 1935, Reg. Sess., p. 950, as amended (1) by Act No. 156 (H. 204), approved April 21, 1936, Acts, Extra Sess. 1936, p. 176; (2) by Act No. 194 (S. 125), ib., p. 225, approved April 21, 1936; and (3) by Act No. 195 (S. 126), ib., p. 228, approved April 21, 1936.

bama, owned by plaintiff. Plaintiff has been in substantially continuous operation of its said business within the State of Alabama for more than eight years last past, including the entire period of the general depression initiated in 1929.

[fol. 2] (2) The defendant Albert A. Carmichael is the Attorney General of Alabama. The defendant Jacob L. Kaufman is the Chairman and a member of, and the defendants Lucien C. Brown and James A. Lipscomb are the associate members of the Alabama Unemployment Compensation Commission (hereinafter referred to as the Commission) established under color of said Unemployment Compensation Law. All the defendants are officials of the State of Alabama charged with the administration and enforcement of said Law. All the defendants are citizens and residents of the State of Alabama and either reside in or, as such officials as aforesaid, maintain their respective offices for the conduct of the business of the State of Alabama with which they are charged in the City of Montgomery, Montgomery County, Alabama. Each of the defendants is over the age of twenty-one years.

(3) By Act Public No. 271, 74th Congress (H. R. 7260), approved August 14, 1935, the Congress of the United States adopted an Act called the Federal Social Security Act.

Titles III and IX of said Social Security Act relate to grants to states for unemployment compensation administration, and to a so-called tax on employers of eight or more employees. Said titles constitute a plan or program "to encourage the passage of State unemployment compensation laws," was recommended to Congress by the President for that purpose (January 17, 1935; June 8, 1934), was reported favorably (H. R. 7260, Sen.: May 13, 1935, Calendar day, May 20) and enacted by the Congress with that end in view, and has been publicized and administered by the Federal board created by the Act to administer it as enacted for that objective.

[fol. 3] (4) In accordance with the stimulation upon the States inherent in the Social Security Act, the Legislature of Alabama adopted, without previous social or economic investigation as to the problem in Alabama or public hearing of any character, by the most expeditious procedure by

which legislation may be enacted, the Alabama Unemployment Compensation Law, approved September 14, 1935, and amended as aforesaid. The Act as amended formally acknowledged (Acts, Ex. Sess. 1936, at p. 178, 180) the design of the federal Act "to coordinate this State and its institutions with the plans and purposes of the Federal Government as expressed in said Security Act," incorporated in the State Law the conditions laid down in the Federal Act as conditions to federal aid and to the offset credit against the Federal employer tax prescribed by the Social Security Act and, by Section 5½ (of Act No. 156, H. 204, approved April 21, 1936, Acts 1936, at p. 180), provided that in the event that the State aid (Title III) or tax provisions (Title IX) of the Federal Act or said Act in its entirety should be held unconstitutional or inoperative, the State Law should become void and inoperative.*

(5) The Alabama Act levies assessments, foreshadowed in the title as contributions and referred to in the Act or in the amendment last above quoted in the alternative as "levies, contributions, taxes, or payroll deductions," the payment or withholding of which is made compulsory under heavy penalties upon all employers of more than eight persons during twenty or more weeks in the year 1935 or in any subsequent calendar year, with the exception of agricultural labor and certain other exempted classes of employers and their employees.

[fol. 4] Plaintiff falls within the description of employers who are made subject to the "contribution." The Commis-

---

* Section 5½. It is expressly provided that in the event the Supreme Court of the United States shall hold Title Three or title nine of the Federal "Social Security Act" approved by the President August 14th, 1935, unconstitutional or inoperative for any reason whatsoever, then this Act shall become void, inoperative and of no effect and all payments of levies, contributions, taxes or pay-roll deductions made hereunder and then remaining unexpended shall be returned ratably to those making such payments and if such payments contain in whole or part deductions from the remuneration of employees, such employees shall in turn be repaid ratably such deductions as are returned on their account to their employers. (Sec. 5½, Acts 1936 at p. 180). Act No. 195, p. 228.

sion has heretofore made call under color of and in conformity with the provisions of the Act, for the payment of the percentage of plaintiff's payroll stipulated for the year 1936 (.90 of 1%), the accrual up to September 1st to be payable on or before October 5th; the accrual for September and subsequent months to be payable on or before the fifteenth day of the succeeding calendar month.

The contribution proposed by the Act to be exacted of employers occupying the status of plaintiff ranges from .90 of one (1) per cent. for 1936, 1.80% for 1937, 2.70% for 1938, 1939 and 1940, and increases to a maximum of 4% for 1941, subject to possible adjustments, in no event having the effect of reducing the levy on any employer subject to the Law below 1.5% of the entire payroll of the employer for the calendar year, and in no event to reduce the average levy on all employers below three (3) per centum, in addition, in all cases, to one (1) per cent. levied upon their employees' gross wages and salaries.

Should the fund established by these levies approach insolvency under the distribution of benefits beginning two years hence, the Commission is required "at once (to) inform the Governor and the Legislature thereof and make recommendations accordingly." Section 10 (a).

No benefits may be drawn down by any employee until two years after the first payments into the fund became due October 5, 1936, the fund meanwhile accumulating in the Federal treasury to which it is drawn under the Social Security Act (Section 904 (a)), as accepted by the State Law.

[fol. 5] (5½) No employer and no employee acquires any interest in the fund. The Federal Social Security Act provides as a condition to — federal aid to any State plan of unemployment compensation (Sec. 303 of Title III) that the State Law shall be approved by the Federal Social Security Board and Title IX (Sec. 903) provides among the conditions authorizing approval a finding that

"(6) All rights, privileges, or immunities conferred by such law or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal such law at any time."

Responsive to this condition, Section 18 of the Alabama Law provides that

"The legislature reserves the right to amend or repeal all or any part of this act at any time; and there shall be no vested private right of any kind against such amendment or repeal • • • " (Acts, 1935, p. 967; Acts Ex. Sess. 1936, at p. 229).

The fund, accordingly, remains at all times subject to diversion by the legislature, without reference to the original sources of the fund. Exercising this reserved right the Legislature of Alabama by amendment of the Act, No. 194, approved April 21, 1936 (Acts, Ex. Sess. 1936, p. 225) has excluded from distribution of benefits under the Act employees of certain classes of employers theretofore subject to the levy. Notwithstanding their exclusion after April 21, 1936, the defendants enforcing the Act are making demand upon the excluded employers for the payment of the levy accrued for the period January 1—April 21, 1936; thus constituting an administrative interpretation of the Act that the levy is made without reference to any prospective distribution of benefits to ex-employees of the employers who build up the fund, and that no weight need be given that circumstance by the legislature in prescribing the application of benefits.

Plaintiff is informed and believes, and upon such information and belief avers that under the Act as now amended employers of less than 27% of employees in Alabama gain- [fol. 5a] fully employed are now subject to the levy, as a result of group exemption of certain classes of employers (agricultural, railroads, etc.), and as a result of excluding businesses employing less than eight workers and all businesses not operating for as much as 20 weeks per annum; that approximately 30% of all persons in the employ of businesses not exempted under the Act are employed by employers with less than eight workers and their employees are accordingly excluded from the levy; that approximately 50% of all workers gainfully employed in Alabama are employed in agriculture and excluded from the Act, these exempted classes with others exempted or otherwise excluded aggregating approximately 75% of the total of all persons gainfully employed. Plaintiff is informed and believed, and upon such information and belief avers that said exempted or excluded employees are as much or more subject to the likelihood of future unemployment beginning October 1, 1938 (the date when benefits become first distributable) as those now in the employment of plaintiff.

(6) In short, the system proposed to be established by the Act is a compulsory scheme of unemployment insurance to be administered for the benefit of a selected group of unemployed persons, stimulated or forced and in essentials controlled by the Federal government and maintained not by any general state tax but by a levy in the nature of a special assessment upon the employers subjected to the Act, and for the time being upon their employees, accompanied by the compulsory pooling of the revenue thus derived into the federal treasury for distribution at some time in the future and to such beneficiaries, as the State may then determine. The original act has already been amended three times. There is no legal or practical assurance that the levy against plaintiff and other employers now subject to the Act will be applied for the benefit of their ex-employees or that any person now in the employ of plaintiff will [fol. 6] at any time become qualified to receive or actually receive a benefit, or if received that such payment will have any remote relation to plaintiff's business or welfare or that the establishment or maintenance of the system confers any current benefit upon plaintiff or its employees during the period in which apparently, the Act is accumulating a fund for payment to future unknown beneficiaries.

Plaintiff is by the terms of the Act liable for the payment of $5,452.04 for account of the statutory percentage of the wages payable with respect to employment from January 1, 1936, through August 31, 1936, and $3,147.24 in employees' contributions for the period May 1 to August 31; $717.86 with respect to the month of September, and $797.63 in employees' contributions for September, and will be required to pay an estimated amount of $2153.58 with respect to wages during October, November and December, 1936, or an estimated total of $8,323.48 due by the company for the year 1936, and $6,337.76 due by its employees.

The estimated amount of the company's contribution, at the percentages prescribed by the Act for 1937 and 1938 will be $17,228.70 and $25,843.06 respectively, or a total of $51,395.24 for the three year period, 1936-1938.

The estimated amount of the contribution levied or to be levied against plaintiff's employees from May 1, 1936, the date prescribed as against employees by amendment of the Act (Sec. 4 (d), Act No. 194, approved April 21, 1936, p. 225) through 1938, is approximately $25,000.00.

(7) Plaintiff is advised by counsel, informed and believes, and upon such advice, information and belief avers that the said Alabama Unemployment Compensation Law, as amended, was and is void and invalid in its entirety as to plaintiff, both as to the levy against plaintiff and as to the compulsory withholding of the amounts levied against its employees; and that said Law is invalid both because of its [fol. 7] intrinsic violation of the state and federal constitutions and for the further reason that by the amendments approved April 21, 1936 (Sec. 5½ of Act No. 156, p. 176 and Act No. 195, p. 228), the Act is made conditional, ab initio, upon the validity of Title III, Title IX of the Federal Social Security Act and that entire Act; all by reason of the facts and averments set out below.

(8) Plaintiff is engaged within the State of Alabama in the sole business of operating a plant for the manufacture of kraft paper and products thereof, and has been engaged in the erection or operation of said plant since 1928. In 1934 the plant shut down twice, for three weeks and two weeks, respectively, on account of floods and repairs. For approximately three months in 1935 operations were suspended on account of a strike or labor dispute. With these exceptions the plant has never shut down for as long as two weeks, and such shut-downs as have occurred have been at long intervals.

Since the beginning of operations in 1928 there has been no curtailment in the total employee personnel regularly employed and reporting for work. The plant is working now and has from the outset worked on appropriate shifts throughout the 24 hours of the day, continuously throughout a work week of six days.

At the beginning of operations in 1928 plaintiff employed approximately 541 men. This personnel was during 1933 increased by the addition of approximately 200 employees in response to NRA request, accompanied by introduction of six hour instead of eight hour shifts, and, since that time, plaintiff has continuously employed approximately from 775 to 800 men.

Plaintiff's employees are in practice divided into three groups, salaried employees, regular employees working on an hourly basis, and a much smaller group which is called upon for peak or unusual work and is, in general, employed [fol. 8] on that basis and in such wise that they (the latter)

do not make arrangements looking to permanent employment.

The salary group have increased steadily and progressively, with a nominal number of exits except for death or to take other employment, removal from the state or like cause having no actual relation to unemployment.

The regular personnel of hourly wage workers have, in like manner, progressively increased with substantially steady employment and with a low percentage of exits of a character sufficient to qualify them under the Act for unemployment insurance benefits.

In general, plaintiff avers upon information and belief that the nature and character of its business and employment of labor does not justify the imposition upon plaintiff or its employees of the contributions to the general problem of unemployment insurance levied upon plaintiff and its employees by the Act, which (based upon the average rate of 3% required during and subsequent to 1941) will amount to more than $38,000 annually.

(9) The Unemployment Compensation Commission has, under color of said Act, demanded and is continuing to demand information as to plaintiff's books, records, and pay rolls, including a weekly statement of all persons performing any service for plaintiff during 1935, their wages, and as to the provisions of the contract relationship; has notified plaintiff and other employers subject to the provisions of the Act that it requires and will require the keeping of the elaborate records contemplated by the Act, the filing of monthly reports and the payment of employer contributions and the withholding and payment of employee contributions, and that the Commission will seek enforcement of the penalties provided by the Act (Section 15-b) in the event of non-compliance; viz.: a fine of from $20 to $200 for each day of non-compliance, imprisonment not exceeding [fol. 9] sixty days or both, and the withholding of the certificates with respect to off-sets under the Federal Act.

(10) Plaintiff avers that the conception and policy underlying the entire scheme of the Act is that those employers who continue to operate their plants and continue to pay wages and their employees who receive wages and salaries are required to provide unemployment insurance for the ex-employees of competitors as well as employees of unrelated plants and industries which cease or curtail employ-

ment, thus directly expropriating money from one individual or group to distribute it directly to another and without pretense of an appropriation of public funds. The more continuous the employment in a given plant or business, the greater its contribution to the consequences of instability at its competitors' and at unrelated plants.

There is nothing in the character of plaintiff's business which warrants singling out the plaintiff and others similarly situated to bear as an employer (rather than a taxpayer along with all other taxpayers) the burden and responsibility of unemployment in the State of Alabama, either as to exemployees of others or as to theoretical unemployment which may, two years hence, originate in a theoretical shut-down of plaintiff's plant or curtailment of its operations.

(11) The business conducted by plaintiff is not hazardous by nature and has not been made the basis of any hearing, investigation or report by the legislature or other public authority in Alabama. There is nothing in the nature of plaintiff's business or the terms of its contracts of employment to invite mediation, regulation or intervention by the State in the negotiation of wages or salaries or as to dismissals or ceasing operation.

So far as plaintiff is advised, its entire employee personnel has solicited and accepted employment on terms fully [fol. 10] understood in advance and satisfactory to themselves. The large majority of its employees established their contract relationship prior to the adoption of the Act.

So far as plaintiff is advised, there has been no complaint from the operating management nor any suggestion from any employee or from any legislative committee or social board that the efficiency or contentment of plaintiff's employees would be increased or that turnover in the future would be avoided if a system of unemployment compensation were established at the plant, voluntary or compulsory. The possibility of any such result is, as a matter of fact as applied to plaintiff, so remote, imperceptible and improbable as to be beyond the legislative discretion.

As to the legitimate functions of the State in the matter of the relationship between employer and employee, plaintiff is subject to and is abiding by all pertinent laws and regulations of the State of Alabama, including the Alabama Workmen's Compensation Act (Code, Chap. 287, Art.

2), to which plaintiff is subject by reason of its continuous employment of more than sixteen employees; to the provisions relating to mediation and arbitration (ib., Art. 4), to the Child Labor Laws (Code, Chapter 99), to the factory inspection law (Code, Section 981), and, in general, to all police regulations of the State of Alabama in fact relating to the employee relationships or business of plaintiff.

Plaintiff avers that the risk of unemployment originating in its own plant is, as to the future, remote and imperceptible, and that the general or conjectural risk of unemployment originating at the plants of other employers is not a function of plaintiff's business or operations such as to warrant legislation by the State of Alabama throwing upon plaintiff the responsibility for and cost of providing directly against such unemployment in either case.

[fol. 11] There is no plant or business in Alabama in which operations, once begun, have been slowed down or employment curtailed as a result of plaintiff's continued operation of its plant and business or as a result of competition from plaintiff.

On the contrary, plaintiff's continued operation from the beginning has tangibly, continuously and directly contributed to employment in other businesses in Alabama.

Plaintiff avers, in short, that there is nothing in or inherent in its business or operations which can be said even remotely to have contributed in the past or to be likely to contribute in the future to unemployment either of its own employees or recent employees or the employees of others in such wise as, on that account, to warrant police regulation by the State of Alabama or the subvention and control of such regulation by the Federal government.

(12) Plaintiff avers that the Alabama Act is invalid, null and void as to plaintiff and as to all other employers in Alabama similarly situated in the respects and for the reasons stated below.

As a System of Compulsory Unemployment Insurance

(a) The Alabama Act purports to establish, and to tax plaintiff in order to maintain, a compulsory system of unemployment insurance having no lawful or reasonable relation to the relationship between plaintiff and its employees;

[fol. 12] (b) The Act in effect compels plaintiff to accept financial responsibility for its employees beyond and after

the termination of their employment, in relation to a matter not in any respect arising out of or incident to or inherent to the employment or the relationship;

(c) The Act is compulsory with reference to a matter necessarily beyond and independent of the employment in that the benefit cannot be drawn upon by the employees until after the employment has ceased, and if the former employee has transferred to other employment, until that employment also has ceased;

(d) The Act in effect compels plaintiff as a condition to employing eight or more employees for twenty weeks in any calendar year to agree to pay, not merely the wages fairly contracted for, but in addition the percentages of the agreed wage fixed by the Act until 1941 and as determined by the Commission during 1941 and subsequently.

(e) The Act in effect compels plaintiff to contribute to a fund for the support not merely of its own former employees after the termination or cessation of their employment, but for the support, during unemployment, of workers never at any time employed by the plaintiff whose misfortune or discharge for cause will in no respect be caused by plaintiff and who have had no relationship to plaintiff at any time.

(f) The Act is wholly arbitrary as a regulation in that there is no assurance under the statute nor any calculable probability that the present levy against plaintiff and its current employees will, two years hence and thereafter, be available for distribution to plaintiff's present employees or its then employees who may then leave its service, or that the Act will not be amended so as to exclude from benefits the persons (now employees of plaintiff) in respect [fol. 13] of whom the levy to build up the fund is now being made both against plaintiff and such employees, or that such employees will not become ineligible under the Act or otherwise. In short, there is no reasonable assurance that the distribution of benefits will ever be related to plaintiff or its employees who contribute to it.

(g) The Act seeks to throw upon plaintiff the burden of unemployment arising out of no breach of duty, fraud, act of misconduct, negligence, or bad citizenship on part of the plaintiff, and arising out of no relationship to the previous

employment; and, in effect, holds plaintiff subject to distraint and liability in respect to a status (unemployment) for which plaintiff is in no respect whatever responsible either to its own former employees or to former employees of others;

(h) The Act under the false guise of regulating the relationship between employer and its employees under the police power, in fact and in effect singles out plaintiff and others similarly situated to compel satisfaction by them of a social desire, policy or obligation of the State.

In the several respects stated the Act deprives plaintiff of its property, of its freedom of contract, and of its liberty without due process, in violation of the 14th Amendment to the Federal Constitution (and of Sections 1 and 35 of the Constitution of Alabama); it takes plaintiff's property without just compensation, in violation of Section 23 of the Constitution of Alabama (1901) and for private use (without the consent of plaintiff), in violation of said Section 23.

Said Act in enlarging the effect of plaintiff's contract relationship with its own employees, established prior to the enactment of the Act (September 14, 1935), and in attaching to the relationship thus previously established burdens and penalties not fairly incident to the contract or to regulation of the relationship, is in effect a law that impairs the obligations of the several contracts of employ-
[fol. 14] ment by which plaintiff's employees were admitted into its service, all in violation of Section 10 of Article I of the Federal Constitution, and of Section 22 of the Constitution of Alabama.

As to the Pooling of Contributions to the Fund and Benefits

(13) Plaintiff avers that the compulsory placing of the burden of unemployment on plaintiff jointly with other employers as proposed by the Act, removes that exaction from any rational or ostensible connection with plaintiff's business or employer relationship in that it pools all contributions of all employers subject to the Act and of their employees into a single fund and extends the benefits of the fund to all ex-employees who after two years become eligible as now defined in the Act or as may be made eligible by future extension of the Act. Plaintiff avers that in this respect the Act is void because of violation of the due

process clause of the Fourteenth Amendment, in that it appropriates to wholly remote and conjectural uses funds collected from plaintiff upon the theory of regulating plaintiff's relationship or obligation to its own employees, and by averaging plaintiff with all others as to a scheme which does not actually become effective for two years necessarily throws upon plaintiff a risk and burden not related to its business or property.

(14) Conforming to the requirement of the Federal Social Security Act, the distribution of benefits is postponed for two years; hence the effect of the Act is to exact from plaintiff and its employees a contribution to a fund which is arbitrary and is not rationally related to any present function of plaintiff's business or employer relation and is in effect a confiscation of the property and wages of plaintiff and its employees to set up an insurance fund as a predicate to a future scheme.

(15) The exaction of a fund presumably based and calculated upon a forecast of unemployment two years hence, [fol. 15] admittedly unpredictable and expressly subject to repeal or amendment both as to the benefits and the eligibles, has no reasonable relation to plaintiff's existing business or employer relationship and is arbitrary.

(16) Plaintiff avers that an Unemployment Compensation Act, in so far as it may find justification under the Constitution of Alabama, must take the form of a poor law sustained by the taxing power, and that the Act in question is in violation of Sections 88 and 93 of the Constitution of Alabama, which direct the legislature to require the several counties of Alabama to make adequate provision for the maintenance of the poor in their respective counties and prohibit the legislature from appropriating state funds or credit to the benefit of individuals, whereas the Act in question, under the guise of state-wide unemployment relief, absolves the counties of that constitutional duty, throws the financial burden of state-wide direct relief upon plaintiff and other employers singled out by the Act without confining it to the County, bases the compensation upon a false theory of compensation rather than indigency, and transfers the administration of the matter from the counties directly informed and concerned to a State Commission and to the Federal Government.

(17) The Act is arbitrary in that in the guise of regulating plaintiff's business and that of other employers, the Act in fact transfers directly to plaintiff and other employers subject to its provisions, and their respective employees, the performance of a duty or obligation which rests upon the State or its subdivisions if it rests upon anyone.

(18) The Act is moreover intrinsically arbitrary and violative of the principle of poor relief as contemplated by Section 88 of the Constitution of Alabama in that it directs the payment of benefits to the eligible unemployed regardless of their age, circumstances, needs or requirements, and [fol. 16] takes the funds of plaintiff and other employers and their employees to support individuals during periods of interrupted employment who are not public charges or likely to be public charges. The Act excludes any consideration of the circumstances of the beneficiaries and in the respects stated constitutes an arbitrary regulation of plaintiff's business in violation of the due process and contract clauses of the State and Federal constitutions above mentioned.

(19) Said Act is also in violation of Section 93 of the Constitution of Alabama, which prohibits the State from appropriating its money or its credit to any individual and by necessary implication prohibits the legislature from appropriating the funds of individuals to a private use to which the legislature could not appropriate State funds.

(20) The Act is invalid in that it authorizes the expropriation by the State of plaintiff's funds for a private purpose while Section 93 of the Constitution declares that state aid of individuals is not a legitimate function of the Legislature.

(21) Said Act is, furthermore, void in that it violates Section 45 of the Constitution of Alabama, requiring that laws enacted by the legislature shall contain one subject, which shall be clearly expressed in its title, in that the title to the Act contains no clear expression of the basic subject matter of the Act, which is the compulsory levy or expropriation of assessments against employers and employees with which to build up a fund. The reference in the title to these taxes as "contributions" is not an accurate reference to the basis of the fund, is lacking in legislative certainty, misleading [fol. 17] and in violation of said Section 45. The amend-

ment of the Act (No. 156, H. 204, Acts 1936, at p. 176) acknowledges the legislative confusion as to the matter by referring to the assessments as "levies, contributions, taxes or pay-roll deductions."

(22) Said Act is also void because of its purported delegation of legislative power in violation of Sections 42, 43 and 44 of the Constitution of Alabama, conferring all legislative power of the State exclusively upon the legislative department, limiting the respective departments to their functions as delegated by the Constitution, and establishing the Senate and House of Representatives as the sole legislative agency of the State. Said Act unlawfully delegates legislative power and discretion in that

(a) It binds the State of Alabama to legislative policies prescribed by the Federal government by the acceptance of the conditions prescribed in Titles III and IX of the Federal Social Security Act and by making the Act conditioned upon the validity of those titles and of the Federal Social Security Act in its entirety.

(b) It delegates to the Federal government the handling and investment of the Unemployment Compensation Fund and in accepting the conditions prescribed by the Federal Social Security Act as to the release of the funds by the Federal Treasury, surrenders or hampers the power and duty to legislate with reference to the matter.

(c) By depositing the fund in the Federal Treasury subject to the provisions of Titles III and IX of the Social Security Act the State of Alabama unlawfully subjects the power to repeal the scheme established by the Act to the loss of the fund, since Section 903 (4) of the Federal Act ex- [fol. 18] pressly stipulates that withdrawals of the deposits made by the States shall be used "solely in the payment of compensation."

(d) The Act provides that its existence, ab initio, is conditional upon the validity of the Federal Social Security Act and Titles III and IX of that Act, and thus leaves the effectiveness of the Act in a state of suspense and uncertainty sufficient to make it abortive as legislation.

(e) The Act is lacking in legislative certainty and is void in making as a condition to its existence the future action

of the Supreme Court of the United States in relation to a federal measure.

(f) The Act, as amended, is void in that it is based upon provisions for levies in the nature of taxes the enforcement of which is supported by provisions for heavy penalties and fines, all of which are made conditional upon the decision of the Supreme Court of the United States as to a federal statute, unpredictable by the plaintiff and other employers, without any assumed or effective right of the plaintiff to invoke that decision or guess it in advance or before the fines and penalties are to be enforced.

(g) The Act, in the respect last above stated, violates the principle of due process within the purview of the decision in International Harvester Company v. United States, 274 U. S. 693.

(23) The Act, while enforcing contributions to establish a fund purporting on the face of the Act to be for the relief of unemployment, two years or more in the future, among the then eligibles defined by the Act, provides that the legislature may amend or repeal the Act, thus effectively re- [fol. 19] serving the power to expropriate the entire fund to any public purpose to which the Federal Government may consent, without vested right of any kind against such amendment (Section 18 of the Act). The effect of this power is to hold the funds paid in subject to recapture as free revenue of the State, provided the Federal Government consents. For this reason and because the Act on its face, as its primary base, viz, the establishment of a public fund, is to raise revenue, the Act is void because of its origin in the Senate in violation of Section 70 of the Constitution of Alabama requiring that all bills for raising revenue shall originate in the House of Representatives.

(24) The Act is arbitrary, denies to plaintiff due process and deprives it of its property without just compensation in violation of the stated provisions of the state and federal constitutions above referred to, in that the schedule of contributions levied against plaintiff and other employers subject to the Act and their respective employees as a whole has no basis in any reports, records or experience, assembled by or available to the legislature, was evolved without legislative or departmental hearing, was supported by no avail-

able actuarial data, and constitutes a wholly arbitrary levy of the statutory percentages, devised and divided arbitrarily and without any known or discretionary basis as between employer and employee.

(25) The said schedule and assessment are, moreover, arbitrary as to plaintiff in particular and violative of the Constitutional provisions stated above in providing for no investigation or hearing by the Legislature or by any Court or tribunal before levying the assessments which are to obtain until the year 1941, and in providing for no hearing for the matter of determination of relative or reciprocal or special benefits or whether the supposed benefit to plaintiff exists or is equal to the assessment.

[fol. 20] On the contrary, the Act freezes a uniform ratio as to all employers until 1941, regardless of past experience or current status of unemployment originating with the individual employers and for and after that year unlawfully delegates to the Commission the discretion to establish the ratio of the assessment at from 1.50% to 4% (prescribing an average minimum for all employers of not less than 3%) and without the establishment of any standard or test for the determination of the percentage within the discretion left to the Commission, all in violation of the due process, compensation and delegation clauses of the State Constitution and the due process clause of the Federal Constitution above stated.

(26) The system established by the Act does not purport to set up any reciprocal or compensating advantage, referable in a constitutional sense to plaintiff. Plaintiff will in fact obtain no tangible or known advantage from the scheme not enjoyed by the general public and by all taxpayers if, two years hence, when the benefits begin to be distributed, the distribution tends to cushion unemployment generally in the state. Such general, remote and hypothetical benefits do not warrant the heavy present expropriation of money from plaintiff and others singled out for the purpose.

Regarded as Tax Levies

(27) The contributions assessed under the Act both against the employer and employee are moreover in violation of the Constitution of Alabama and void for the

further reasons stated below. The scheme represented by the Act is an integral one, based upon the raising of the so-called compensation fund. The Act is, accordingly, dependent for its validity upon the validity of the levies made under the Act.

Regarded as taxes, plaintiff avers that the levies are null and void for the following reasons:

[fol. 21] (a) The levy, in the case of the employer on his gross expense for wages and salaries, and in the case of the employee upon his gross income from wages or salary, is in violation of the Constitution of Alabama. In the latter case (the levy on employees) the tax is necessarily to be regarded as an ad valorem tax levied upon the wages as they accrue for payment, within the meaning of the decisions of the Supreme Court of Alabama in Ex parte Morrill-Doyle Realty & Ins. Co., 213 Ala. 697, 106 So. 63, and Eliasberg Mercantile Co. v. Grimes, 204 Ala. 492, 86 So. 56. Being at the rate of 1%, the tax is in violation of Section 211 and 214 of the Constitution of Alabama, fixing the base of ad valorem property taxes on value and limiting the rate to .65 of one per cent. As an income tax, the tax is not justified under the income tax amendment (XXII) inasmuch as it is levied upon an element of gross income and is not subject to the deductions and exemptions provided by said Amendment nor levied upon net income and is therefore not authorized by the income tax amendment.

(b) Regarded as a tax levied against plaintiff and other employers (on the theory of license tax for pension funds) the tax is invalid both (1) in the levy and (2) in its scheme of appropriation by the State.

1. The tax is arbitrarily levied against employers of eight workers for more than twenty (20) weeks in 1935 or subsequently in the included businesses, while arbitrarily excluding from its operation (a) employers of workers in the same industry, however numerous, for less than 20 weeks in any calendar year; (b) employers of seven workers or less, although in continuous operation; (c) employers of agricultural labor, however numerous or continuous; (d) employers of crews on navigable waters; (e) employees of railroads subject to the Federal Railway Labor Act. These exceptions constitute an unlawful and arbitrary discrimination against plaintiff and the other included classes of

[fol. 22] employers, lacking in any lawful basis of classification and having the effect of taking plaintiff's property without due process and denying to plaintiff the equal protection of the laws, contrary to the 14th Amendment of the Federal Constitution and the due process requirements of the Constitution of Alabama (Sections 1 and 35) referred to above.

2. If regarded as an ad valorem tax on the money in the possession of plaintiff and paid out to its employees it is at a rate higher than permitted by Section 214 of the Constitution of Alabama and in violation of that provision.

3. The scheme represented in the collection and application of the levies is violative of the due process clauses of the State and Federal Constitutions in that it is a plan for the expropriation of funds from one class for the benefit of individuals and is not within the taxing powers of the State of Alabama.

(28) The scheme is inherently arbitrary and the levies proposed to be made both upon plaintiff and its employees constitute a burden upon plaintiff in the conduct of its business and the use of its property amounting to denial of due process contrary to the due process provisions of the State and Federal Constitutions, in that the scheme proposes levies grossly in excess of the object in view, in so far as the objective has any lawful relation to plaintiff. The scheme contemplates a maximum allowance to an eligible employee of up to $15 per week for 16, plus a possible extended 10 weeks, aggregating a total of $390. The contribution proposed to be exacted from plaintiff and its employees during the period before the first benefits are payable * will aggregate not less than $75,000. The additional amounts required to be paid into the fund for the years 1939 and 1940 [fol. 23] by plaintiff and its employees, estimated to be in excess of $70,000, will under the Act be required to be paid over by the inflexible terms of the Act before plaintiff can invoke any administrative action to reduce the ratio; and during and after 1941, the best that plaintiff can expect

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* Two years from the first date upon which contributions became due (Act, Sec. 5 (a)), which was fixed by direction of the Commission at October 5, 1936.

under the Act is to reduce its permanent annual contribution to an estimated $15,000 per annum, its employees' assessment remaining fixed at 1%, or approximately $10,000.

The results stated, whether the Act be regarded as an attempted regulation of the business or a contribution assessed for the public welfare or as a tax incident to and appropriated to maintain a benefit insurance or pension scheme (in this case, not for public employees but for private individuals), are so grossly remote, excessive and out of relation to any possible benefits to plaintiff or its employees as to constitute a discriminatory, excessive and unusual burden upon plaintiff's business and a violation of due process.

(29) The provision of the Act precluding plaintiff from any hearing upon the matter of the rate until 1941 in and of itself makes the Act arbitrary and oppressive.

Aside from the high level of employment in all classes of employees, plaintiff employs approximately seventy salaried employees with nominal variation in the number. During 1933 there was at no time a falling off of more than one (1) in the number of salaried employees from the previous high of the year, during 1934 one (1), during 1935 two (2), and during 1936 to date two (2). The salaries paid shop employees, not including hourly wage employees, (average 71) during 1935 was approximately $145,662.83, in addition to approximately $90,000 paid central office salaried employees. There was and is in prospect substantially no turn over. The inclusion of such employees in the computation of the levy upon plaintiff and said employees is plainly arbitrary and out of relation to any supposed or theoretical benefit, public or private, proceeding either to the plaintiff or such employees under the plan.

[fol. 24] As an "excise" or "regulatory" tax, even if otherwise leviable, it is grossly out of relation to the privilege exercised or public service or function involved, if any.

Federal Social Security Act

(30) The validity of Titles III and IX of the Federal Social Security Act and that Act in its entirety are adopted by the amendments of the State Act as the basis and test of the existence of the State Act (Amendments, Ex. Sess. 1936, pp. 225 and 228). Said titles and their adoption as the

test of valid legislation by the State of Alabama are in violation of the Federal Constitution, in so far as they purport to justify a levy upon plaintiff or the receipt and handling of the proceeds of levies under the State Act, for the reasons stated below. Wherefore, in addition to the legislative uncertainty arising out of the condition stated above, said State Act is by its terms void and insufficient to justify the levies, threats and interferences threatened by the defendants.

Title III

(a) The provisions of Title III of the Federal Act violate Section 1 of Article I and Paragraph 18 of Section 8 of Article I of the Constitution of the United States in that Section 302 (a) illegally delegates to the Federal Social Security Board legislative powers vested by the Constitution solely in the Congress and such attempted delegation fails to prescribe definite standards under which the powers attempted to be delegated to the Federal Social Security Board may be exercised by it. The said Board is directed to determine and certify for payment to each state meeting the requirements of the Federal Act such amount of the Federal appropriation found by it to be necessary for the proper administration of the law during the fiscal year in which the payment is to be made but it is provided that such determination shall be based not only upon the population of the state, but upon an estimate of the number of per- [fol. 25] sons covered by the state law, as to which neither the State nor Federal authorities have accurate information, and such other factors as the Board finds relevant—a test not limited or defined by any standard and resting in the arbitrary and uncontrolled discretion of the Federal Board.

(b) The provisions of Title III of the Federal Act violate the Tenth Amendment to the Constitution of the United States in that by the appropriations therein contained and the conditions with respect to legislation therein required of the respective states Congress has sought to coerce and compel the legislatures of the several states to adopt specific legislation and thus govern the concerns reserved to the states by the Constitution.

(c) The provisions of Section 303 (b), Title III of the Federal Act violate the Tenth Amendment to the Constitu-

tion of the United States in that, in vesting in the Federal Social Security Board the right to refuse any state the benefit of the appropriations made by Section 301 of said Title III and to refuse certifications to the Secretary of the Treasury required as a condition precedent to payment from such appropriations upon the sole and discretionary determination of the said Board as to whether there has been legal denial of unemployment compensation payments under the provisions of the state law or compliance with the state law, Congress has sought thereby to govern the concerns reserved to the states by the Tenth Amendment to the Constitution.

Title IX

(d) The provisions of Title IX of the Federal Act, Section 903, violate the Tenth Amendment to the Constitution of the United States in that thereby and by the other provisions of said Title IX Congress has sought to compel and coerce the legislatures of the several states to adopt specific legislation and to surrender control of state funds to a Fed- [fol. 26] eral agency and thus to govern the concerns reserved to the states by the Tenth Amendment to the Constitution.

(e) The provisions of Title IX of the Federal Act, Section 903 (b), violate the Tenth Amendment to the Constitution of the United States in that in vesting in the Federal Social Security Board the discretion to certify or not to certify to the Secretary of the Treasury any state which the Board finds has changed its law so that it no longer contains the provisions specified in the Federal Act, or has with respect to a particular taxable year failed to comply substantially with any such provision, upon the sole and discretionary determination of the Federal Board, Congress has attempted to govern the concerns reserved to the states by said Amendment.

(f) The provisions of Title IX (Sec. 903 (4)), refusing the release of the deposits of the State except upon condition that withdrawals "shall be used solely in the payment of compensation" unduly hampers the legislative and sovereign discretion of the State of Alabama in violation of the Tenth Amendment.

(g) The provisions of Title IX (Sec. 93 (2)) that no compensation shall be payable until the fund has accumu-

lated for two years, and of Sec. 910 (a) (1) that a merit rating or adjustment is not to be permitted any employer except on the basis of not less than three years of "compensation experience" will defer for a period of at least five years from January 1, 1936, any chance of plaintiff or other employers to obtain an adjustment of the levy based on merit rating or any rational or informed ascertainment of the facts.

(h) The provisions of Title IX of said Act are repugnant to the provisions of the Fifth Amendment in that the same deprive plaintiff and its employees of their property without due process of law and constitute a taking of their property for public use without compensation.

(i) Said Title IX, in conjunction with Title III constitutes a scheme to induce or compel the states to establish [fol. 27] and maintain a system of unemployment compensation based on contributions levied against employers, an objective beyond any of the delegated powers of the Federal Government.

(j) The provisions thereof which seek to levy taxes thereunder violate the Constitution of the United States in that the so-called taxes therein sought to be levied are not taxes authorized by the Constitution of the United States for the support of the Government, but are illegal exactions designed to expropriate money from one group of citizens for the benefit of another group in violation of the Fifth Amendment.

(k) The taxes or contributions levied by said Title IX are not taxes levied for the purposes of the Government nor to provide for the general welfare of the United States within the authorization of Article I, Section 8 of the Constitution.

(l) Said taxes are merely exactions levied in an attempt to regulate matters over which the Congress has no authority, in violation of the Ninth and Tenth Amendments.

(31) Plaintiff will suffer irreparable injury because of the matters herein complained of if said Alabama Act is enforced by defendants, for which injury plaintiff has no adequate remedy at law and no redress or remedy except

in a court of equity or unless the injunctions prayed for herein are granted, for the following reasons among others:

If plaintiff, to avoid the severe penalties prescribed by the Act for non-compliance pays the tax or assessment levied by the Act, there is no adequate remedy available under the laws of Alabama for its recovery.

If plaintiff withholds and pays over the assessment levied against its employees, plaintiff will incur liability for and subject itself to a multiplicity of suits for the recovery of the amounts deducted.

[fol. 28] Plaintiff would also be put to great and unnecessary expense in complying with the requirements of the Act and the Commission as to elaborate and continuing records contemplated by the Act and the regulations of the Commission.

If plaintiff declines to conform, it runs the risk of and has been advised that the defendants will attempt to enforce the Act and apply the penalties, thus inevitably involving plaintiff in a series of proceedings to force payment and compliance and subjecting plaintiff to the grave risk of cumulative daily penalties and penalty interest.

If the fund is once paid over to the Federal Government under the Act, Section 903 of Title IX of the Federal Act provides for its withdrawal only for use "in the payment of compensation;" nor is there any method available to plaintiff to obtain direct refund of any levy passed into the Federal treasury.

(32) Plaintiff avers that this is a case of actual controversy within the meaning of Act Public No. 343, 73rd Congress, approved June 14, 1934, known as the Federal Declaratory Judgments Act (Sec. 274 (d), Judicial Code, 28 U. S. Code, Sec. 400), authorizing courts of the United States, upon petition or other appropriate pleading, to declare rights and other legal relations of any interested party; that declaration of the invalidity of said Alabama Unemployment Compensation Law and of Titles III and IX of the Federal Social Security Act, and of said Federal Social Security Act, in so far as they are severally made the basis and condition to the validity or effectiveness of said Alabama Unemployment Compensation Law, is appropriate under said Act.

(33) Plaintiff further avers that plaintiff is entitled under the Uniform Declaratory Judgments Act of the

Legislature of Alabama, approved September 7, 1935 (Act No. 355, Acts 1935, p. 777), to have said Alabama Unemployment Compensation Law and Titles III and IX of said [fol. 29] Federal Social Security Act, and said Federal Social Security Act, declared invalid in so far as the validity or invalidity thereof is made the basis and condition to the validity and effectiveness of said Alabama Unemployment Compensation Law.

Wherefore, the Premises Considered, plaintiff prays that this Honorable Court make parties defendant hereto the defendants hereinabove named in accordance with the statute and rules in such cases made and provided, and that process issue requiring them and each of them to appear and answer this bill in equity within the time fixed by the Court or by law, but not under oath, answer under oath being hereby waived; that a court of three judges, of whom at least one shall be a Justice of the Supreme Court or a Circuit Judge, be convened pursuant to Section 266 of the Judicial Code (28 U. S. Code, Sec. 380) to hear the plaintiff's application for a preliminary injunction as hereinafter prayed, and that immediate notice of the hearing of said application for a preliminary injunction be given to the Governor of the State of Alabama, and to the defendants in this cause; that this Court, being convened as aforesaid, issued its order and decree, preliminary to a final hearing and determination of this cause, restraining and enjoining the enforcement and operation or execution of the Alabama Unemployment Compensation Law and the taxes, contributions, penalties, forfeitures, fines or impositions therein provided for, by restraining and enjoining the defendants, and each of the-, and all servants, agents or employees of them and each of them from in any manner whatsoever collecting or attempting to collect, or taking any steps to collect, and from enforcing, directly or indirectly, by notice, suit, information, distraint, demand, levy, attachment, forfeiture, or otherwise, from or against the plaintiff, any tax, contribution, penalty, forfeiture, fine or imposition [fol. 30] levied, assessed or accruing under or under color of said Alabama Unemployment Compensation Law, approved September 14, 1935, or any amendment or amendments thereof; and that upon final hearing of this cause, said injunction be made permanent.

Plaintiff further prays that pending the hearing and determination of its application by the Court convened as aforesaid for an injunction preliminary to the final hearing of this cause, the Court issue its order and decree restraining and enjoining the enforcement and operation or execution of said Alabama Unemployment Compensation Law and the collection or imposition of the taxes, contributions, penalties, forfeitures, fines or impositions therein provided for, by restraining and enjoining the defendants and each of them and all servants, agents or employees of them and each of them from in any manner whatsoever collecting or attempting to collect, or taking any steps to collect, and from enforcing, directly or indirectly, by notice, suit, information, demand, distraint, levy, attachment, forfeiture or otherwise, from or against the plaintiff, any tax, contribution, penalty, forfeiture, fine, imposition or levy, assessed or accruing under or under color of said Alabama Unemployment Compensation Law or any amendment or amendments thereof.

Plaintiff further prays that this Court receive this bill of complaint as an appropriate pleading under the Federal Declaratory Judgments Act (Sec. 274 (d), Judicial Code) and also under the Uniform Declaratory Judgments Act of the State of Alabama (Acts 1935, p. 777) for the declaration by this Court of the invalidity of the Alabama Unemployment Compensation Law and of the non-effect of said Law by reason of the invalidity of Titles III and IX of the Federal Social Security Act and of said Federal Act upon which the effectiveness of the Alabama Law is conditioned, and to that end, that this Court declare said [fol. 31] Federal Act and Titles III and IX thereof invalid as to plaintiff, and by final decree herein declare that by reason of such invalidity as to plaintiff said Alabama Law is by its terms declared to be and is null, void and of no effect.

Plaintiff further prays that in addition to the parties hereinabove named or described as defendants, such notice or process issue to Harwell G. Davis, the United States Collector of Internal Revenue for the District of Alabama, whose residence is at Birmingham in the Northern District of Alabama, and such other officials or persons as may be appropriate.

And the plaintiff prays for such other, further or different relief as may be meet and just in the premises.

Respectfully submitted, Lucien D. Gardner, Jr., Jos. F. Johnston, Forney Johnston, Solicitors for Plaintiff. Cabaniss & Johnston, Of Counsel.

[fol. 32] *Duly sworn to by H. D. Warner. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 33] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER SETTING APPLICATION FOR INJUNCTION FOR HEARING, ETC.—Filed October 17, 1936

This cause coming on to be heard upon plaintiff's application for the convening of a court of three judges to hear its application for a preliminary injunction, and upon its further application for a temporary restraining order pending the determination of the application for a preliminary injunction, and the matter being submitted upon plaintiff's verified bill of complaint, and being considered and understood by the Court, it is by the Court

Ordered, Adjudged and Decreed that plaintiff's application for the convening of a court of three judges to hear its application for a preliminary injunction is granted, and that said application for a preliminary injunction be heard and determined on October 26th, 1936, and that notice of such hearing be immediately given to the Governor of the State of Alabama and to the Attorney General of the State of Alabama, one of the defendants named in said bill of complaint, and to the other defendants named in said bill of complaint.

And it appearing to the Court that immediate and irreparable injury, loss or damage will result to the plaintiff unless the temporary restraining order, as prayed is issued because

(a) If the plaintiff pays to the Alabama Unemployment Compensation Commission the said contributions or taxes

now demanded of it by said Commission the plaintiff has no adequate remedy by suit, legal proceeding or otherwise to recover the said contributions or taxes paid by it in the event the Alabama Unemployment Compensation law is held unconstitutional and void or otherwise invalid,

[fol. 34] (b) The refusal of plaintiff to pay said contributions or taxes will subject the plaintiff to the additional interest, penalties, fines and criminal imprisonment fixed by said law unless the plaintiff is protected by a restraining order,

(c) Plaintiff has no other remedy save by injunction to protect its rights pending determination as to the validity of said law,

(d) No substantial injury will result to the defendants from the issuance of said restraining order,

It is, Therefore, Ordered, Adjugded and Decreed that the defendants Albert A. Carmichael, individually and as Attorney General of the State of Alabama, Jacob L. Kaufman, individually and as Chairman of the Alabama Unemployment Compensation Commission, Lucien C. Brown, individually and as Associate Member of the Alabama Unemployment Compensation Commission, and James A. Lipscomb, individually and as Associate Member of the Alabama Unemployment Compensation Commission, and each of their servants, agents or employees be and they are severally enjoined and restrained, until this Court shall have heard and disposed of said application for a preliminary injunction, from collecting or attempting to collect, or taking any steps to collect, and from enforcing, directly or indirectly, by notice, suit, information, distraint, demand, levy, attachment, foreiture or otherwise, from the plaintiff, any tax, contribution, penalty, forfeiture, fine or imposition levied, assessed or accruing under or under color of the Alabama Unemployment Compensation Law, approved September 14, 1935, or any amendment or amendments thereof.

It further appearing to the Court that the plaintiff has paid to The First National Bank of Montgomery as depository the monies required to be paid by it to date under the provisions of the said Alabama Unemployment Compensation Law, said payments having been made pursuant to the

orders of this Court heretofore entered in the cause pending in this Court entitled Alabama By-Products Corporation, a corporation, et al, plaintiffs, vs. A. A. Carmichael, individually and as Attorney General of the State of Alabama, [fol. 35] et al, defendants, In Equity, No. 690, in which cause the plaintiff herein was formerly a party plaintiff, it is by the Court

Ordered, Adjudged and Decreed that said The First National Bank of Montgomery as depository shall continue to hold said monies paid to it by the plaintiff herein until the further order of this Court and that such monies shall be held and disposed of in accordance with the further orders of this Court in this cause.

It is Further Ordered that the plaintiff shall execute and file a bond for One Thousand ($1000.00) Dollars with good and sufficient sureties, to be approved by this Court, conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained hereby.

It is Further Ordered that United States Bonds or Treasury Certificates of the par value of the amount of money deposited with said The First National Bank of Montgomery as depository may be substituted for such monies deposited at any time.

Done and Ordered this 17th day of October, 1936 at 10 o'clock, A. M., which is the exact date and hour of the issuance of this order.

(Signed) C. B. Kennamer, United States District Judge.

[File endorsement omitted.]

[fol. 36] In United States District Court

[Title omitted]

Acceptance of Service and Waiver—Filed October 17, 1936

Service of notice of the hearing of plaintiff's application for a preliminary injunction on October 26, 1936 is hereby accepted on behalf of the Governor of the State of Alabama,

the undersigned as Attorney General of the State of Alabama, and of the other defendants in this cause, and further service or notice thereof, is hereby waived.

(Signed) Albert A. Carmichael, Attorney General, State of Alabama, Attorney for Defendants.

[File endorsement omitted.]

[fol. 37] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER RESETTING APPLICATION FOR INJUNCTION FOR HEARING—Filed October 24, 1936

It appearing to the Court that October 30th is the earliest practical date for the convening of a court of three judges to hear plaintiff's application for a preliminary injunction, it is by the Court

Ordered, Adjudged and Decreed that plaintiff's application for a preliminary injunction be heard and determined on October 30, 1936, and that the hearing of its application heretofore set on October 26, 1936 be continued until October 30, 1936.

It is Further Ordered, Adjudged and Decreed, that the restraining order granted to the plaintiff by the order of this Court entered in this cause on October 17, 1936 be continued in full force and effect until this Court shall have heard and disposed of said application for a preliminary injunction which is set for hearing and determination on October 30, 1936.

Done and Ordered this 24th day of October, 1936.

C. B. Kennamer, United States District Judge.

[File endorsement omitted.]

[fol. 38] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER RESETTING APPLICATION FOR INJUNCTION FOR HEARING—Filed October 29, 1936

Heretofore in this cause, on the 17th day of October, 1936, an order was made and filed on the same date, a full and complete copy of which order is hereto attached, marked Exhibit "A" and made fully a part hereof. Thereafter, the application for a temporary injunction was postponed from ten o'clock A. M. on the 26th day of October, 1936, until ten o'clock A. M., on the 30th day of October, 1936.

On this, the 28th day of October, 1936, it was made known to the court that the Honorable Bibb Graves, individually, and as Governor of the State of Alabama, had not been given notice of the time and place of the hearing of the application for a temporary injunction before the statutory court, and the court was notified that he desired the full 5 days notice as required by the statute.

It is, therefore, Ordered, Adjudged and Decreed that the hearing of the application for a temporary injunction be and the same hereby is set down for hearing and determination in the court room of this court at nine o'clock A. M., on the 18th day of November, 1936 before the statutory court consisting of Judge Samuel H. Sibley, Circuit Judge of the Fifth Judicial Circuit, and Judge R. T. Ervin, a District Judge and C. B. Kennamer the District Judge to whom and in whose court the application for a temporary injunction was presented and filed, the former two having been in accordance with Section 266, as amended, of the Judicial [fol. 39] Code, called to the assistance of the undersigned to hear and determine said application.

It is, further, Ordered, Adjudged and Decreed that a copy of this order, including Exhibit "A" hereto attached and a copy of the bill filed herein be served by the Marshall of this court, or one of his authorized deputies in person upon the Honorable Bibb Graves, individually and as Governor of the State of Alabama.

It is, further Ordered, Adjudged, and Decreed that the restraining order heretofore granted to the plaintiff by the

court in this cause be continued in full force and effect until the statutory court shall have heard and disposed of said application for a preliminary injunction, which is set for hearing and determination as aforesaid on November 18, 1936.

All other matters reserved for such other and further orders as may seem just and proper in the premises.

C. B. Kennamer, District Judge.

UNITED STATES OF AMERICA,
Middle District of Alabama, ss:

I certify and return that on the 29 day of October, 1936, I received the within order and that I served a full, true and correct copy of the same together with all exhibits attached and all endorsements thereon, and a copy of the bill of complaint, on the Honorable Bibb Graves, individually and as Governor of the State of Alabama at his office in Montgomery, Alabama, on the 29 day of October, 1936.

Walter Bragg Smith, United States Marshal, By C. E. Smith, Deputy Marshal.

NOTES.—Here follows and is attached an exact copy of the order of October 17, 1936 and the filing thereof, captioned "Exhibit "A" and at foot of which is stamped "Returned and filed Oct. 29, 1936. O. D. Street, Jr., Clerk."

[fol. 40] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS—Filed November 7, 1936

Come the defendants and respectfully move the Court to dismiss the amended bill of complaint in this cause and for grounds show:

1. There is no equity in the bill.

2. The plaintiff has a full, complete and adequate remedy at law.

3. The bill seeks to enjoin the administration and enforcement by the defendants of the Unemployment Compensation Law of the State of Alabama upon the alleged ground

that said Act is violative of the Constitution of the United States and of the State of Alabama, when, for aught that appears in the bill, the said law is a valid Act of the Legislature of Alabama and violates no provision of either the Federal or State Constitution.

4. By the bill the plaintiff seeks to enjoin the defendants from executing the duties of their office with reference to the Unemployment Compensation Law of the State of Alabama upon the ground that said law is unconstitutional and void, when, as a matter of law, the said Act is valid, and it is the legal duty of these defendants to uphold, administer and enforce the same, as appears by the allegations of the bill.

5. The bill seeks to procure this Court's injunction of the defendants from discharge of their duties as officers of the State of Alabama under said State's Unemployment Compensation Law, upon the alleged ground that the enforcement of said law by these defendants, in pursuance of the terms of the law and of their official duties, will work irreparable injury to the plaintiff, when, in the meaning of the term "irreparable injury" as known to the law and as defined by equitable rules and practices which prevail in this Honorable Court, such will not result to the plaintiff.

6. For aught that appears in the bill, the plaintiff by obeying the law, or by disobeying it, will not suffer irreparable injury, within the meaning of that term in law and in equity.

[fol. 41] 7. While the defendants are sued individually as well as in their official capacities, the bill is, in practical effect, a suit against the State of Alabama, and for aught that appears in the bill, the State has not given its consent to be so sued and no court has jurisdiction of said suit without the State's consent.

A. A. Carmichael, Individually and as Attorney General of the State of Alabama, Appearing Per se and as Solicitor for all of the Defendants. Chas. L. Rowe and Peyton D. Bibb, Assistant Attorneys General of the State of Alabama. Inge & Stallworth, of Counsel.

[File endorsement omitted.]

[fol. 42] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDMENT TO MOTION TO DISMISS—Filed November 18, 1936

Come now the defendants with leave of court and amend their motion to dismiss the amended Bill of Complaint, heretofore filed in this cause, by adding thereto the following separate and several grounds:

8. That the Bill of Complaint as amended in so far as it seeks to obtain a declaration of any claim, right or immunity of the plaintiff under the provision of the Federal Declaratory Judgments Act (Section 274-D, the Judicial Code, 28 U. S. Code Annotated Section 400,) is without equity and not properly within the jurisdiction of this honorable court.

9. That the amended Bill of Complaint insofar as it seeks a declaration by this court under the Uniform Declaratory Judgments Act of the Legislature of Alabama, approved September 7, 1935, (Act No. 355, General Acts 1935, page 777) of any right privilege or immunity, claimed by the plaintiff with reference to the Alabama Unemployment Compensation law or Titles III and IX of the Federal Social Security Act, or the Federal Social Security Act as a whole, is without equity and is not properly within the jurisdiction of this honorable court.

10. For that this honorable court especially convened pursuant to the provisions of 28 U. S. Code Annotated Section 360, is without jurisdiction to hear and determine the issues [fol. 43] raised by the Bill of Complaint as amended by virtue of the fact that the Bill of Complaint as amended is not such a suit as is contemplated by such statute but has been converted by such amendment into a proceeding which seeks a declaration, generally of the plaintiff's alleged rights and immunities, under the provisions of the Federal Declaratory Judgments Act (Section 274-D, Judicial Code, 28 U. S. Code, annotated Section 400) with reference to the Alabama Unemployment Compensation law, the Federal

Social Security Act and and Titles III and IX of the Federal Social Security Act.

A. A. Carmichael, Individually and as Attorney General of the State of Alabama, Appearing Per Se and as Solicitor for all of the Defendants. Chas. L. Rowe and Peyton D. Bibb, Assistant Attorneys General of the State of Alabama. Inge & Stallworth, of Counsel.

[fol. 44] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DIRECTING ISSUANCE OF NOTICE OF SUIT, ETC.—Filed November 9, 1936

This cause came on to be heard upon ex parte showing by the plaintiff as follows:

(1) The amended bill of complaint filed herein November 6, 1936, seeks among other things relief be final decree under the Federal Declaratory Judgments Act and under the Alabama Uniform Declaratory Judgments Act, in relation to the validity of Titles III and IX of the Federal Social Security Act.

(2) This action is sought be reason of the fact that the effec-iveness of the Alabama Unemployment Compensation Law, directly involved in this proceeding, is by its terms, as amended by Act No. 156, Acts 1936, p. 176; and Act No. 105, Acts 1936, p. 228, made ineffective conditioned upon a declaration of invalidity of Titles III or IX of said Federal Social Security Act or said Act in its entirety.

(3) That plaintiff cannot determine, in advance of an adjudication as to the validity of said Titles III or IX of said Federal Social Security Act, or said Act in its entirety, whether or not the said Alabama Unemployment Compensation Law is effective or is null and void.

[fol. 45] (4) The bill of complaint as amended prays that notice or process issue to Harwell G. Davis as Collector of Internal Revenue, and that notice of the proceeding should also be given to the United States District Attorney

for the Middle District of Alabama and by mail to the Attorney General of the United States and to the Federal Social Security Board.

Upon consideration thereof and reserving all questions as to the effect or result of such notice or service,

It is Ordered that the Clerk of this court issue notice of this suit in the usual form to Harwell G. Davis as Collector of Internal Revenue, with copy of this order attached, to be served by the Marshal, and that copy of this order and of the amended bill of complaint be mailed or delivered by the Clerk to the U. S. Attorney for the Middle District of Alabama and to the Attorney General of the United States, and to the Federal Social Security Board, Washington, D. C., for such appearance or representations as they may see fit to propose herein on the hearing set for this cause on November 18th, 1936, or otherwise.

Given, this 9th day of November, 1936.

(Signed) C. B. Kennamer, U. S. District Judge.

[File endorsement omitted.]

[fol. 46] In United States District Court

[Title omitted]

Notice of Motion, etc.

Messrs. Lucien D. Gardner, Jr., Joseph F. Johnston and Forney Johnston, Care Cabiniss & Johnston, Solicitors for the Plaintiff.

Please take notice that on Wednesday morning, November 18, 1936, at 9 o'clock in the forenoon or as soon thereafter as counsel may be heard we shall present a motion, a true copy of which is attached hereto to the court at its court room in Montgomery, Alabama.

Dated November 16th, 1936.

James E. Murphy, Special Assistant to the Attorney General. Thos. D. Samford, United States Attorney.

Service of the foregoing notice and a copy of the accompanying motion is acknowledged this November 18, 1936, and there is no objection.

Cabaniss & Johnston, Solicitors for the Complainant.

[fol. 47] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS—Filed November 16, 1936

Now comes Harwell G. Davis, United States Collector of Internal Revenue for the Collection District of Alabama, appearing by his solicitors, Robert H. Jackson, Assistant Attorney General of the United States and Andrew D. Sharpe and James E. Murphy, Special Assistants to the Attorney General of the United States and respectfully moves the Court to dismiss the bill of complaint as amended as to him for the following reasons:

1. This Court is without power or jurisdiction to render a declaratory judgment respecting the validity of the Federal Social Security Act or the taxes imposed thereby.

2. This Court is without power or jurisdiction in this proceeding to grant any relief or enter any decree against or respecting the said Harwell G. Davis, either individually or in his official capacity as Collector of Internal Revenue.

3. The said Harwell G. Davis is neither a proper, necessary or indispensable party to this proceeding either individually or as said United States Collector of Internal Revenue.

[fol. 48] 4. The bill of complaint as amended sets forth no facts sufficient to constitute a cause of action in law or in equity against said Harwell G. Davis.

5. This Court is without jurisdiction to entertain this suit as against said Davis because it is in substance and effect against the United States which is an indispensable party and which has not consented to be sued or waived its immunity from suit.

6. Because no relief is prayed in the complaint as against the said Harwell G. Davis and he is not made a party hereto.

7. Because this Court has no jurisdiction over said Davis or the United States or the subject matter of this cause in so far as said cause seeks a decree or judgment respecting the Federal Social Security Act.

8. There is a misjoinder of causes of action because an equitable cause of action to enjoin officials of the State of

Alabama from applying or enforcing a State law is joined with a cause of action praying a declaratory judgment.

9. Because the bill of complaint as amended fails to present an actual or justiciable controversy between said Harwell G. Davis and the plaintiff herein.

Wherefore, said Davis prays that the foregoing motion be granted and the bill of complaint as amended be dismissed as to him with costs against the plaintiff.

Dated November 14, 1936.

(Signed) Robert H. Jackson, Assistant Attorney General. Andrew D. Sharpe, Special Assistant to the Attorney General. James E. Murphy, Special Assistant to the Attorney General. Thomas D. Samford, United States Attorney.

[File endorsement omitted.]

[fol. 49] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF MOTION, ETC.

Messrs. Lucien D. Gardner, Jr., Joseph F. Johnston and Forney Johnston, C/o Cabiniss & Johnston, Solicitors for the Plaintiff:

Please take notice that on Wednesday morning, November 18, 1936, at 8 O'Clock in the forenoon or as soon thereafter as counsel may be heard we shall present a motion, a true copy of which is attached hereto to the court at its court room in Montgomery, Alabama.

Dated November 16th, 1936.

(Signed) James E. Murphy, Special Assistant to the Attorney General. Thomas D. Samford, United States Attorney.

Service of the foregoing notice and a copy of the accompanying motion is acknowledged this November 18, 1936, and there is no objection.

Cabaniss & Johnston, Solicitors for the Complainant.

[fol. 50] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS—Filed November 16, 1936

Now comes Thomas D. Samford, United States Attorney for the Middle District of Alabama, appearing by his solicitors, Robert E. Jackson, Assistant Attorney General of the United States and Andrew D. Sharpe and James E. Murphy, Special Assistants to the Attorney General of the United States and respectfully moves the Court to dismiss the bill of complaint as amended as to him for the following reasons:

1. This Court is without power or jurisdiction to render a declaratory judgment respecting the validity of the Federal Social Security Act or the taxes imposed thereby.

2. This Court is without power or jurisdiction in this proceeding to grant any relief or enter any decree against or respecting the said Thomas D. Samford, either individually or in his official capacity as United States Attorney.

3. The said Thomas D. Samford is neither a proper, necessary or indispensable party to this proceeding either individually or as said United States Attorney.

[fol. 51] 4. The bill of complaint as amended sets forth no facts sufficient to constitute a cause of action in law or in equity against said Thomas D. Samford.

5. This Court is without jurisdiction to entertain this suit as against said Samford because it is in substance and effect against the United States which is an indispensable party and which has not consented to be sued or waived its immunity from suit.

6. Because no relief is prayed in the complaint as against the said Thomas D. Samford and he is not made a party hereto.

7. Because this Court has no jurisdiction over said Samford or the United States or the subject matter of this cause in so far as said cause seeks a decree or judgment respecting the Federal Social Security Act.

8. There is a misjoinder of causes of action because an equitable cause of action to enjoin officials of the State of Alabama from applying or enforcing a State law is joined with a cause of action praying a declaratory judgment.

9. Because the bill of complaint as amended fails to present an actual or justiciable controversy between said Thomas D. Samford and the plaintiff herein.

Wherefore, said Samford prays that the foregoing motion be granted and the bill of complaint as amended be dismissed as to him with costs against the plaintiff.

Dated November 16th, 1936.

(Signed) Robert H. Jackson, Assistant Attorney General. Andrew D. Sharpe, Special Assistant to the Attorney General. James E. Murphy, Special Assistant to the Attorney General. Thomas D. Samford, United States Attorney.

[File endorsement omitted.]

[fol. 52] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF MOTION, ETC.

Messrs. Lucien D. Gardner, Jr., Joseph F. Johnston and Forney Johnston, C/o Cabiniss & Johnston, Colicitors for the Plaintiff:

Please take notice that on Wednesday morning, November 18, 1936, at 9 O'Clock in the forenoon or as soon thereafter as counsel may be heard we shall present a motion, a true copy of which is attached hereto to the court at its court room in Montgomery, Alabama.

Dated November 16th, 1936.

(Signed) James E. Murphy, Special Assistant to the Attorney General. Thomas D. Samford, United States Attorney.

Service of the foregoing notice and a copy of the accompanying motion is acknowledged this November 18, 1936, and there is no objection.

(Signed) Cabaniss & Johnston, Solicitors for the Complainant.

[fol. 53] IN UNITED STATES DISTRICT COURT

[Title omitted]

SPECIAL APPEARANCE AND MOTION AS TO JURISDICTION—Filed November 16, 1936

Now comes the Attorney General of the United States, Homer S. Cummings, appearing specially for the sold purpose of this motion to object to jurisdiction, by his solicitors, Robert H. Jackson, Assistant Attorney General of the United States, Andrew D. Sharpe and James E. Murphy, Special Assistants to the Attorney General of the United States and Thomas D. Samford, United States Attorney for the Middle District of Alabama, and for no other purpose, and moves this Honorable Court to vacate as to him the order dated November 9, 1936, respecting service of notice of this suit upon him and directing him to file answer or other defenses to the alleged amended bill of complaint herein and further moves this Court to quash, vacate and set aside as to him all attempted service and return of service thereof and any and all writs or process issued pursuant to said order and the attempted service and return of service thereof and all action taken in respect to him under or pursuant to or by virtue thereof for the following reasons:

[fol. 54] 1. That he, said Homer S. Cummings, is a resident of the City of Washington, in the District of Columbia, that the official residence of the Attorney General of the United States is in said City of Washington, that said Homer S. Cummings is not a citizen or resident of the State of Alabama nor within the United States Judicial District for the Middle District of Alabama and is not subject to the service of process therein; that the only valid service of process possible against him under and pursuant to the laws and rules in such case made and provided is personal service upon him within the Middle Judicial District of Alabama and that no such service has been or can be had, but that the aforesaid order and the service attempted to be made of the same and of all process issued pursuant thereto is wholly void and of no effect, as to him, all of which appears from the records, files and papers in this cause and from the said order and the return of service herein and from the attached affidavit, to all of which reference is hereby expressly made.

Wherefore, said Homer S. Cummings prays that this motion be granted.

(Signed) James E. Murphy, Special Assistant to the Attorney General. Thomas D. Samford, United States Attorney.

Appearing specially for the above-stated purpose only.

Dated November 16, 1936.

[fol. 55] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT IN SUPPORT OF SPECIAL APPEARANCE AND MOTION AS TO JURISDICTION

Homer S. Cummings, of Washington, D. C., being first duly sworn, deposes and says in connection with the above-named matter:

1. That he is the Attorney General of the United States.

2. That he is not and has not been a resident or citizen of the State of Alabama or within the Middle Judicial District of Alabama.

3. That no papers in connection with said proceeding have been served upon him personally or by leaving a copy thereof at his dwelling house or his usual place of abode or with any adult who is a member of or resident in his family.

4. That he has received no notice or service in connection with this proceeding except the receipt of an ordinary unregistered letter, a true copy of which is attached, with which was enclosed a copy of an amended bill of complaint. Said letter was received in the office of said Attorney General at Washington, D. C., on November 12, 1936. Said bill of complaint is undated and contains no statement respecting the date of filing with the Clerk of Court or other means of identification as to date except an affidavit of one H. D. Warner attached thereto which is dated November 5, 1936.

(Signed) Homer S. Cummings.

Sworn to and subscribed before me on this 14th day of November, 1936. (Signed) Ugo J. A. Carusi, Notary Public. (Seal.) Ugo J. A. Carusi, Notary Public, District of Columbia.

[fol. 56] Copy

Department of Justice,

United States District Court,

Office of the Clerk,

Middle District of Alabama

Montgomery, Ala., November 18, 1936.

The Attorney General, Washington, D. C.

Dear Sir:

Pursuant to an order made on November 9, 1936, in the case of The Gulf States Paper Corporation, a Corporation, versus A. A. Carmichael, individually and as Attorney General of the State of Alabama, et als., No. E-692, I am mailing you herein copy of this said order, copy of amended bill and subpoena in equity.

Yours very truly, (Signed) O. D. Street, Jr., Clerk,
U. S. District Court.

[fol. 57] [File endorsement omitted]

In United States District Court

[Title Omitted]

Notice to Vacate or Modify Order Directing Issuance of Notice of Suit, etc.—Filed November 18, 1936

Now comes the Plaintiff by its Solicitor, Forney Johnston and respectfully moves the Court

1. To vacate or modify the order dated November 9th, 1936, directing the Clerk of this Court to issue notice of this suit to Harwell G. Davis, Collector of Internal Revenue, to Thos. D. Samford, United States Attorney for the Middle District of Alabama, and to the Attorney General of the United States and to the Federal Social Security Board, in so far as same may be construed or subject to construction as an order directing the issue of process or making said persons, officials or agencies parties to this suit.

2. To vacate, set aside and quash any and all subpoenas or process issued to said Collector of Internal Revenue, said

United States Attorney, said Attorney General of the United States and said Federal Social Security Board, and to set aside and quash any service or purported or attempted service of process and any return thereof as services of process and adjudging that any such notice or purported service shall stand and is construed solely as notice of the proceedings for such intervention in the matter as they might on their own motion deem appropriate.

[fol. 58] 3. To amend Plaintiff's Amended Bill of Complaint by striking therefrom the next to the last paragraph thereof, which reads as follows:

"Plaintiff further prays that in addition to the parties hereinabove named or described as defendants, such notice or process issue to Harwell G. Davis, the United States Collector of Internal Revenue for the District of Alabama, whose residence is at Birmingham, in the Northern District of Alabama."

The Plaintiff disclaims any prayer or intention to seek or obtain in this proceeding any affirmative relief against any of the Federal officers or agencies mentioned.

(Signed) Forney Johnston, Of Counsel for Plaintiff.

ORDER

Upon consideration of the foregoing motion, it is ordered that the same be granted, that the order directing notice be vacated or modified accordingly, that nothing done pursuant thereto shall be regarded as the service of process requiring the persons or agency served or notified to appear herein as a party or as having any effect other than to notify them of the pendency of the proceeding and of the prayer for declaratory judgment.

Given this 18th day of November, 1936.

(Signed) Samuel H. Sibley, For the Court, U. S. Circuit Judge. Robert T. Ervin. C. B. Kennamer.

[fol. 59] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER—Filed November 18, 1936

Come the defendants, jointly, separately and severally, without waiving their right or the rights of either of them to have this cause dismissed upon the grounds set forth in the motion to dismiss filed herein, and reserving those rights, the defendants jointly, separately and severally, for answer to the bill of complaint as amended, state as follows:

(1) For answer to paragraph one of the bill of complaint as amended, the defendants say that this plaintiff has no right to maintain this suit as a class suit within the meaning of Equity Rule 38 and that no other employer than the plaintiff herein has such an interest in the subject-matter of this suit within the purview of Equity Rule 37 as to allow any such other employer to intervene herein. Further answering, the defendants say that they are not informed of the time or place of the organization of the plaintiff's business or the kind, character or extent of its operation within the State of Alabama, but demand strict proof of the averments in reference thereto.

(2) For answer to paragraph two of the bill of complaint as amended, the defendants admit the averments thereof, except that the defendants say that they are not the only officials of the State of Alabama charged with the enforcement of the Alabama Unemployment Compensation Act referred to. The defendants aver that under the Constitution and laws of the State of Alabama, the Governor of the State [fol. 60] of Alabama is charged with the administration and enforcement of the laws thereof, including the Alabama Unemployment Compensation Act, and that the Chairman and Associate Members of the Alabama Unemployment Compensation Commission were appointed by Bibb Graves, the Governor of the State of Alabama, and are engaged in their duties in the enforcement of the Alabama Unemployment Compensation Act under his direction and control, and that Bibb Graves, the Governor of Alabama, is a necessary and indispensable party to this suit but has not been joined herein as a party defendant.

(3) For answer to paragraph three of the bill of complaint as amended, the defendants admit that the Federal Social Security Act, being Public #271, Seventy-fourth Congress, H.R. 7260, was duly enacted by the Congress of the United States and approved on August 14, 1935. Further answering, the defendants say that the purpose, intent and scope of such Act is apparent from the terms and provisions thereof and that the plaintiff's statement and conclusion regarding such purpose is irrelevant and immaterial to the issues in this suit.

(4) For answer to paragraph four of the bill of complaint as amended, the defendants say that the Alabama Unemployment Compensation Act, General Acts of Alabama 1935, page 950, et seq., was properly enacted by the Legislature of Alabama and approved by the Governor on September 14, 1935, in proper and constitutional exercise of the reserved protective police power of the Sovereign State of Alabama. Further answering, the defendants say that the plaintiff's statements in reference to the reason or reasons why the Alabama Act was adopted are untrue and wholly irrelevant to the issues before the court in this cause. Defendants further say that the Alabama Act was not adopted without consideration and by the most expeditious procedure but say that as early as July 30, 1935 the expected enactment of the Federal Social Security Act was brought to the attention of both Houses of the Legislature; each House adopted a [fol. 61] joint resolution under which a joint committee of representatives from the Senate and from the House was raised to consider the Federal Act in relation to conditions in the State of Alabama and to recommend whether or not the Legislature, then in session, should enact any legislation relating to unemployment compensation insurance; that on, to wit, August 20, 1935, one of the Senate members of that committee offered in the Senate the bill which, with amendments, today constitutes the Alabama Unemployment Compensation Act. On the same August 20th, a bill on the same subject was offered in the House by one of the House Members of said committee. The bills were referred to the Rules Committee of the House in which they were respectively offered and were reported favorably. The Senate bill was so reported and amended August 22nd and finally passed and sent to the House for consideration August 27th.

The bill was under consideration in the House until its

final enactment and signing by the Speaker of the House on September 10th, was delivered to the Governor on September 13th and by him approved on September 14th, 1935, all being done strictly in accord with the constitutional requirements concerning the making of laws in Alabama.

(5) For answer to paragraph five of the bill of complaint as amended, the defendants admit that the Alabama Act requires contributions, in the amounts and at the times and from the persons therein particularly provided, but deny that such Act imposes either heavy or severe penalties for the violation of the terms thereof. Further answering, the defendants say that the only penalties provided for by the terms of said Act as amended are for proper interest on delinquent payments and a criminal penalty for willful violations or fraud, and none of which contributions or penalties can be enforced by these defendants or by any other person, save by a proper proceeding in a court of competent jurisdiction against the employer, such as this plaintiff, in [fol. 62] which the defendant may adduce and present any legal or equitable defense and every right, defense or immunity which the plaintiff claims or seeks to enforce in this suit.

Further answering, the defendants say that they admit that the plaintiff, as an employer of eight or more persons within the meaning of the Alabama Act, is under the duty to make the contributions therein required, and that plaintiff is obligated to make such contributions for the year 1936. Defendants further say that the contribution payable by the employers subject to the terms of the Act increases from 90/100 of 1% for 1936 to Two and 70/100 per cent for 1938, 1939 and 1940, but say that the percentage does not increase to a maximum of 4% for 1941 and thereafter, but remains at Two and 70/100 per cent until adjusted on the basis of experience thereafter, as provided by Section 4 of the Alabama Act as amended. Defendants further say that the percentage or percentages which may obtain for years subsequent to 1940 and other provisions of the Act which have not now been and cannot now be brought into operation, are immaterial and irrelevant to the issues in this suit.

Further answering, the defendants say that Section 5 (a) of the Alabama Act provides:

"Payment of Benefits.—After contributions have been due under this act for two years, benefits shall become payable."

Defendants deny that meanwhile the funds collected under the Alabama Act will accumulate in the Federal Treasury, but aver that, under the terms of the Alabama Act such collections will be deposited in the special Unemployment Trust Fund created by Section 904 of the Social Security Act, and such deposit will remain at all times subject to the exclusive discretion of the Alabama Unemployment Compensation Commission with regard to its withdrawal therefrom.

(5½) For answer to paragraph five and one-half of the bill of complaint as amended, the defendants deny each and [fol. 63] every averment and statement therein made or contained, except that by Section 18 of the Alabama Act as amended, the Legislature of Alabama reserved the right to amend or repeal the Alabama Act at any time.

(b) Further answering, the defendants deny that employers of less than 27% of employees gainfully employed in Alabama are now subject to the Alabama Act, and deny that 30% of all persons in the employ of businesses not exempted under the terms of the Act are employed by employers with less than eight employees, and deny that 50% of all workers gainfully employed in Alabama are employed in agriculture and deny the materiality of any averment regarding the number of persons employed in agriculture in Alabama. The defendants further deny that 75% of the total of all persons gainfully employed in Alabama are exempted from the terms of the Act. The defendants deny that the employees or persons exempted or excluded from the operation of the Act are as much or more subject to the likelihood of future unemployment beginning October 1, 1938, than those now in the employment of the plaintiff, and further deny the materiality of any averment in respect thereto to the proper issues in this case.

Further answering the defendants aver that the classes of persons or services excluded from the provisions of the Alabama Act, as set out in Section 2 (g) as amended, are as follows:

"The term 'employment' shall not apply to:

(1) Agricultural labor;

(2) Domestic service in a private home;

(3) Service performed as an officer, bar pilot, or member of the crew of a vessel on the navigable waters of the United States;

(4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(5) Service performed in the employ of the United States Government or of an instrumentality of the United States;

(6) Service performed in the employ of a carrier engaged in interstate commerce and subject to the Act of Congress [fol. 64] known as The Railway Labor Act; as amended or as hereafter amended. Service performed by those engaged as solicitors or agents for Insurance Companies.

(7) Service performed in the employ of a state, or political subdivision thereof, or an instrumentality of one or more states or political subdivisions;

(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual."

It readily appears that these exclusions from the scope of the Act not only constitute a reasonable classification, but are necessary in dealing with the problem of industrial unemployment.

(6) For answer to paragraph six of the bill of complaint as amended, the defendants deny each and every averment and statement therein contained except defendants admit the liability of plaintiff for accrued contributions to the Alabama Unemployment Fund as stated in this sixth paragraph and that the probabilities are that plaintiff will be required to pay as therein stated and possibly more than is therein stated.

The Alabama Act establishes a compulsory scheme of unemployment insurance reserves to be raised by contributions by employees and employers and to be administered

for the benefit of the General Public Welfare. Whether such scheme has been stimulated or forced by the Federal Government is immaterial. In no essential is it controlled by the Federal Government. These contributions are pooled in the Federal Treasury for distribution to the beneficiaries under the terms of the Act. The Alabama Act has already been amended three times, all on the same day, April 21, 1936. The scheme does assure the plaintiff's employees of benefits in event of their unemployment.

Defendants further answer that the plaintiff and other employers have exactly the assurance of right and just dealing by the Legislatures of Alabama, as governs the businesses and the lives and the properties of all citizens of [fol. 65] Alabama, and this Honorable Court is bound to assume that in the future the Legislatures of Alabama will righteously, wisely and constitutionally execute the duties of their office, however much the plaintiff has averred or may aver to the contrary.

(7) For answer to the seventh paragraph of the bill of complaint as amended, the defendants deny that the validity of the Alabama Unemployment Compensation Act as amended is dependent upon the validity or constitutionality of the Federal Social Security Act or of Title III or Title IX thereof. The Act and amendments thereof, were duly and constitutionally enacted by the Legislature of Alabama and duly and properly approved by the Governor of Alabama, in lawful and constitutional exercise of the reserved police powers of the Sovereign State of Alabama and that no section of the Alabama Act as amended violates any provision of either the Constitution of the State of Alabama or of the Constitution of the United States.

(8) For answer to paragraph eight of the bill of complaint as amended, the defendants deny the averments therein contained. Further answering, the defendants deny that the averments with respect to the specific number of persons employed by plaintiff, their hours and character of work and the alleged actual continuity of plaintiff's operations are irrelevant and immaterial to the real issues in this case.

(9) (a) For answer to paragraph nine of the bill of complaint as amended, the defendants deny that they have demanded of the plaintiff any information other than reports

covering contributions payable, employment and directly related matters required of employers by Section 10 (g) of the Alabama Act; the defendants deny that they have notified the plaintiff and other employers subject to the Act that it requires or will require the keeping of elaborate records by the plaintiff; the defendants admit that they have notified the plaintiff that, under the provisions of the Alabama Act the plaintiff is required to file the monthly reports and to pay the proper contributions for itself and to with- [fol. 66] hold and pay over to the Alabama Unemployment Compensation Commission the proper contributions due from plaintiff's employees.

(b) Further answering, the defendants deny that they have notified the plaintiff that they will seek enforcement of any penalty, criminal or otherwise, provided by the Alabama Act further than, as required by the Act, they have tried to give publicity to the Act and its provisions and they state that no penalty which is provided by the Alabama Act can be imposed or enforced against the plaintiff except in an orderly proceeding in a court of competent jurisdiction and in which proceeding the plaintiff can assert by way of defense every claim, right of immunity which it claims or seeks to enforce in this suit and any other legal or equitable defense which it might have.

(c) Further answering, the defendants say that they have not threatened or advised the plaintiff, or any other employer subject to the provisions of the Alabama Act, that in the absence of compliance by the plaintiff with the provisions of the Alabama Act, they will not issue certificates with respect to credits or off-sets under Title IX of the Federal Act, and state further that they have no power to compel the granting or refusal of any credit under the Federal Act and that unless the contributions required of the plaintiff are paid, no receipt therefor such as might entitle plaintiff to claim any credit under the Federal Act can be issued.

(10) (a) For answer to paragraph ten of the bill of complaint as amended, the defendants deny the averments thereof and further state that the statements therein of the plaintiff's theory of the conception and policy of the Alabama Act are wholly irrelevant and immaterial to the issues in this case. Further answering, the defendants state that

the Alabama Act as amended was duly enacted by the Legislature of Alabama and approved by the Governor of Alabama, in proper and reasonable exercise of the police power of the Sovereign State of Alabama in the proper advance-
[fol. 67] ment and protection of the public health, the public morals and the public welfare.

Further answering, the defendants say that there has been no singling out of the plaintiff for particular and special treatment different from that accorded other employers, nor is the validity of the Alabama Act to be determined by application of the meager yard-stick of the plaintiff's individual and isolated alleged record of operation; but that, under the terms of the Alabama Act, as well as the Federal Act, burdens and responsibilities are fixed generally upon employees in industry as a whole throughout the State and the Nation, from which the evils of unemployment have been shown, by common experience known to all, to have arisen.

(11) (a) For answer to paragraph eleven of the bill of complaint as amended, the defendants deny each and every averment therein contained.

(b) Further answering, the defendants state that they deny that the plaintiff's business is not hazardous by nature, and further deny that in the nature of plaintiff's business there has been nothing to invite any mediation, regulation or intervention by the State of Alabama in the negotiation of plaintiff's wages or salaries paid its employees or to dismissals of employees or the cessation of plaintiff's operation.

The defendants further answering say that plaintiff's business consists in the operation of a large plant converting raw pine wood into finished paper and employing large machines, large vats filled with steam and boiling water, highly charged with chemical compounds and requiring the handling by men, and by machines in the presence of men, of large and unwieldy and heavy objects and the employment of large quantities of electricity and steam, both dangerous to human life and that accidents do occur, cripples are made and deaths caused among the plaintiff's employees in and by the plaintiff's operations of its business.
[fol. 68] Further answering, the defendants deny the materiality or relevancy of any such allegations to the issues in this suit.

(c) The defendants deny that the large majority of plaintiff's employees established their contract relationship prior to the adoption of the Alabama Act and further deny that the plaintiff now has specific and identifiable contracts of employment with its employees now in effect and which were executed prior to the passage and approval of the Alabama Act, and further deny that the allegation of the bill of complaint in reference thereto is material or relevant to the issues in this case.

(d) Further answering, the defendants say that it does not appear with sufficient clarity what plaintiff intends to aver by the allegations in reference to the efficiency or contentment of plaintiff's employees and the avoidance of "turn over", but whatever fact is sought to be averred thereby, the defendants deny, and the defendants further deny the propriety of any conclusion or fact or law sought thereby to be drawn.

(e) The defendants are not advised whether the plaintiff has abided by other proper legislative enactments of the State of Alabama, relating to the employee relationships or business of the plaintiff, and denies the materiality of any of the averments in reference thereto to the issues in this case. It conclusively appears from the averments of its bill of complaint that it has not and does not intend peaceably to abide by and comply with the proper and reasonable requirements of the Alabama Unemployment Compensation Act.

(f) The defendants deny that the risk of unemployment originating in plaintiff's plant is, as to the future, remote and imperceptible and that the Alabama Act is unwarranted. Defendants state that such speculative statements of the bill are irrelevant and impertinent to the issues in this case. Defendants further state that the operation of the plaintiff's business and its relationship with its employees and its existence as a unit of the entire industrial [fol. 69] make-up of the body politic of the State of Alabama is a fit and proper subject for the exercise by the Legislature of Alabama reasonably of the reserved police power of the Sovereign State of Alabama.

(g) Defendants are not advised of the true facts in reference to the effect of the operation of plaintiff's business upon any other given specific business in the State of Ala-

bama and whether the plaintiff's operation may have caused a curtailment of operation or employment therein, nor whether the plaintiff's operation in fact has contributed employment to any other businesses in the State of Alabama, and in answer thereto, the defendants say that such averments are pure conjecture by the plaintiff and are immaterial and irrelevant to the issues in this case, but to the extent to which such statements might be deemed relevant the defendants demand strict, full and categorical proof of all true facts in reference thereto.

(h) Further answering, the defendants say that they are not advised whether the citizens of Tuscaloosa County aggressively solicited the location of plaintiff's plant at its present location, but defendants admit that by public subscription generously and widely extended the citizens of Tuscaloosa County, Alabama, contributed substantially to the plaintiff's location of its business at that place and thus aided plaintiff in a most substantial financial manner and in a manner which, the defendants are informed and believe, is not accorded or available to businesses in general in the State of Alabama. Further answering, the defendants say that there is no legal or practical assurance that the plaintiff will or will not be able to operate its business definitely in the future or will be able to afford employment to the large number of employees which it alleges that it now employs or that the plaintiff will not shut down [fol. 70] its operation altogether and throw its present employees out of employment and upon the public agencies for support; nor is there any legal or practical assurance that, plaintiff's business having admittedly been the beneficiary of a large subsidy from the citizens of Tuscaloosa County in its inception, the plaintiff will not again, as a condition to its continued operation and to save the community of the disastrous effect of discontinuing of employment of its employees, again demand that the citizens of Tuscaloosa County "by public subscription generously and widely extended", further contribute to the cost of plaintiff's operation. Further answering, the defendants say that even if plaintiff's business has not in the past contributed to the problem of unemployment in the State of Alabama, which conclusion the defendants deny, the defendants say that it appears from the plaintiff's own averments that the public subscription, generously and widely extended, by the peo-

ple of Tuscaloosa County contributed in large measure to the alleged apparent success of plaintiff's operations.

(12) Answering the twelfth paragraph of the amended bill defendants say that they are advised that insofar as said paragraph alleges conclusions either of fact or of law, they neither deserve nor require an answer. Insofar as said paragraph alleges facts the defendants deny the allegations. The defendants deny that the Alabama Unemployment Act singles out plaintiff to compel satisfaction by it of any desire, policy or obligation of the State further than to state a duty owing by the plaintiff while doing business in this State and defendants deny that the Act deprives the plaintiff of property, freedom of contract or of liberty, or that it takes property without compensation or for private use or impairs the obligation of any contract of plaintiff, or that it violates either the Federal or the State Constitutions.

(13) Answering the thirteenth paragraph of the amended bill the defendants deny that the pooling of contributions [fol. 71] provided for by the Act appropriates the contributions to remote or conjectural uses, or throws upon the plaintiff any risk or burden not related to its business or property.

(14) Answering the fourteenth paragraph of the amended bill, the defendants deny that the Act exacts contributions to a fund which is arbitrary, or in effect, confiscates property and aver that the unemployment fund is not arbitrary and is rationally related to plaintiff's business and employer relation.

(15) Answering paragraph fifteen of the amended bill these defendants deny the allegations thereof and say that the unemployment compensation fund set up by the Alabama Act has a direct and reasonable relation to plaintiff's business as an employer of more than eight persons and to the general welfare of the State and Nation and is not arbitrary but is reasonably calculated to materially lessen the evils of industrial unemployment, to which the plaintiff's business and all other industries of the nation are subject.

(16) Answering paragraph sixteen of the amended bill defendants deny that unemployment compensation must take the form of a poor law in Alabama and say that the sug-

gestion of relief of poverty is wholly divergent from the fundamentals of the Alabama Act, which is definitely an insurance scheme wherein one deposits in a fund with reasonable expectation of benefits in keeping therewith. Neither Section 88 nor 93 of the Alabama Constitution has any relation whatever to the scheme of the Act, whose theory of compensation is rightly based upon contribution and not upon indigency. These defendants further answer that the counties are not directly informed and concerned in the problems of unemployment in the State and their local interests and influences definitely preclude them from rightly administering any state-wide unemployment compensation law, and the Alabama Act does not transfer the administration to the Federal Government but keeps it definitely in the hands of the Unemployment Compensation Commission of Alabama

[fol. 72] (17) Answering paragraph seventeen of the amended bill, defendants deny its allegations and say that the Act transfers no burden but fixes upon plaintiff and its employees a definite duty to contribute to a fund to compensate reasonably expected losses from unemployment which America's experience and the experience of Alabama has shown to be inherently a result of the existing industrial system, and the Act is not arbitrary but is a reasonable effort to make proper provision against the evils of industrial unemployment.

(18) Answering paragraph eighteen of the amended bill, defendants deny the allegations thereof and answer that the Act has nothing to do with poor relief as contemplated by Section 88 of the Constitution of Alabama and expressly provides that one who works and contributes as provided by the Act shall be eligible for the participation in its benefits should his circumstances so demand. Under the scheme of the Act a beneficiary receives that for which he has bought and paid for, not poor relief or favor, and in that respect is not an arbitrary regulation of plaintiff's business in violation of any constitution but is a reasonable and proper exercise of the police power for the public welfare.

(19) Answering paragraph nineteen of the amended bill defendants say the Act does not violate Section 93 of the Constitution and defendants say that the Act does not appropriate any state money or credit, nor does it appropriate

the funds of individuals but does require as a condition of exercising the privilege of employing more than eight persons as provided by the Act, that the plaintiff must contribute to a fund in some reasonable degree insuring the employees against the loss of unemployment and insuring the plaintiff itself against the loss which the State and the Nation at large necessarily must suffer from uncompensated evils of unemployment.

(20) Answering paragraph twenty of the amended bill the defendants deny its allegations and allege that the Act makes no expropriation of plaintiff's funds for private purposes but properly requires the plaintiff, in its business as alleged in the bill, to contribute to the maintenance of an insurance reserve, which is a proper exercise of the police power, insofar as it is vested in the Legislature.

[fol. 73] (21) Answering paragraph twenty-one of the amended bill, defendants deny the allegations thereof and say that the title of the original Act and of the amended Acts contain but one subject which is clearly expressed in the title, as required by the Constitution of Alabama.

(22) Answering paragraph twenty-two of the amended bill, the defendants deny the allegations of paragraph twenty-two and further say that the Act does not unlawfully delegate power nor does it

(a) bind the State to Federal policies;

(b) delegate anything to the Federal Government; nor

(c) subject the power to repeal to the loss of the State; nor

(d) make its existence conditional upon the validity of the Federal Act; nor,

(e) lack certainty, nor is it conditioned upon the future action of the Supreme Court of the United States; nor

(f) make its provisions conditional upon the decision of the Supreme Court; nor

(g) does it conflict with the due process principle as set forth in 274 U. S. 693.

The Act is a valid exercise of the police power of the Legislature; confers upon the agencies created by it only

such authorities as are permitted by the Constitutions; takes advantage of the Federal Act and puts the State of Alabama in the position of cooperating with all of the other states of the United States that recognize that the problem of industrial unemployment is a national problem as much beyond the power of any one state to prevent, regulate or relieve as it is beyond the power of any individual employer, and is a proper effort of the State of Alabama to do its part in furthering the public welfare not only of itself but of the other states and of our nation.

[fol. 74] (23) Answering paragraph twenty-three of the amended bill, defendants deny the allegations thereof and say that the power to amend or repeal the Act confers upon the State no power to expropriate, nor does it express any such power. It is an expression of the people's will and the people's authority to exercise that will as circumstances and the administration of the Act may to the people appear wise and proper. The Act establishes no public fund but reasonably requires the parties subject thereto to pool a small portion of their own funds for their own protection.

(24) Answering paragraph twenty-four of the amended bill, defendants deny the allegations thereof and say that legislation is not required to be based on either records, reports or experience, or hearings or actuarial data as alleged in the paragraph. Its enactment might have been properly based entirely upon the general knowledge the Legislature had, or upon the vast mass of data upon the general subject which had been collected and made public by the Federal Government. The statutory percentages are wholly within the constitutional discretion vested in the Legislators.

(25) Answering paragraph twenty-five of the amended bill, defendants deny the allegations thereof and say that investigations and hearings such as are suggested by the paragraph are no constitutional conditions precedent to legislation. The provision for a change of rate of tax upon certain employees after 1940 is wholly immaterial to the questions presented in this cause at this time. If it be material for the answer as to this, these defendants say the power given to the Unemployment Compensation Commission to fix a rate in 1941, based upon four years experience in administering the act, coupled with the limitation of be-

tween 1½% and 4% for individual employers and an average minimum for all employers of not less than 3 o/o, is a reasonable regulation and device for the proper administra-
[fol. 75] tion of the Legislature's Act, entirely within the due process, the compensation and delegation clauses of the Constitutions.

(26) Answering paragraph twenty-six of the amended bill, defendants deny the allegations thereof and say that whether plaintiff will be benefitted is a proper matter for the Legislature to determine and the benefits of the Act warrant its required contributions.

(27) Answering paragraph twenty-seven of the amended bill, defendants deny the allegations thereof and further say that the contributions required are in no sense taxes and are but reasonable regulations properly made by the State of businesses wherein eight or more persons are employed within the callings prescribed by the Act, and constitutes no expropriation of funds from one class for the benefit of individuals other than the members of that class.

(28) Answering paragraph twenty-eight of the amended bill, defendants deny the allegations thereof and say that the exactions of the Act are not grossly in excess of the objects in view and should experience demonstrate that the required contributions are more than are needed, the reserved right of amendment of the Act is ample protection of those from whom the contributions are required and constitutes no discriminatory or excessive burden upon the plaintiff's business and no violation of due process, although it is admitted that the requirement by the Act that the plaintiff and all other employers of eight or more must contribute to a fund to lessen the evils of unemployment creates a new legal duty upon plaintiff and other employers which experience has demonstrated is not voluntarily recognized.

(29) Answering paragraph twenty-nine of the amended bill, defendants deny that the lack of hearing the plaintiff makes the Act arbitrary or oppressive. These defendants are not informed, other than by plaintiff's bill, as to the [fol. 76] details of the employment alleged in this paragraph and if the allegations are material, demands proof thereof. Defendants deny that the contributions demanded of salaried employees are arbitrary or out of relation to the

benefits proceeding from the plan of the Act and allege that the fact that the salaries are based upon the operation of wage earners definitely demands that any fair plan requires contribution from the salaried as well as the wage-paid worker in industry and the entire exaction is reasonably related to the privilege exercised by the plaintiff and its workers, whether paid salaries or wages.

(30) Answering paragraph thirty of the amended bill, the defendants deny that the validity of the Federal Act or Title III and IX thereof are the test of the existence of the State Act and further answering say that the State Act only provides that it shall come to an end if and when the Supreme Court of the United States shall have determined that the Federal Act is invalid and allege that the provisions of the Alabama Act with reference thereto violates no provision of the Federal Constitution.

(a) The Federal Act does not delegate legislative powers illegally and sets up proper standards for the Federal Social Security Board to follow in discharge of its duties in the execution of the Federal Law and does not provide for any arbitrary or uncontrolled discretion in said Board.

(b) Congress has not sought to coerce and compel or to govern the states as alleged but has recognized the inherent justice in allowing credits on the Federal tax for such contributions as the taxpayer may have properly made towards the Social Security of the nation as provided in the Federal Act.

[fol. 77] (c) Defendants deny that Section 303 (b) of the Federal Act violates the Federal Cons-itution and say that the determination of the Board as to whether or not any taxpayer has contributed to the unemployment compensation fund of the State where he does business was properly left by Congress to the Federal Social Security Board and that Congress has not thereby sought to govern the states.

(d) Defendants deny that Section 903 of the Federal Acts violates the Tenth Amendment and say that Congress has only offered to taxpayer credits for payments made by him in furtherance of the national social security and requires no surrender of State funds to a Federal agency but only requires that the funds, for the payment of which the

credit is given, shall be adequately secured for the purposes for which the national credit is given.

(e) Defendants deny that Section 903 (b) violates the Cons-itution as alleged and say that no discretion is vested in the Federal Board as alleged but that a positive duty under certain fixed conditions are laid upon the Board by the Federal Act and that in so legislating, Congress has not attempted to illegally govern the states.

(f) Section 903(4) does not hamper the State but aids the provisions of its Act and does not violate the Tenth Amendment.

(g) That the Act defers any adjustment by the Board of the amendment of tax upon the plaintiff until 1941 is admitted, but it is denied that the plaintiff is barred for so long from a chance to obtain an adjustment, which is definitely and affirmatively provided for by the express reservation of the right of amendment.

[fol. 78] (h) Defendants deny the allegations of sub-paragraph (h) and answer that the Act does not take for public use any property except as the Congress of the United States is by the Constitution authorized to tax and by the Act does tax the plaintiff.

(i) The Allegations of sub-paragraph (i) are denied and defendants allege that the tax exacted by Title III is Federal revenue and not ear-marked for unemployment compensation insurance, nor does Title IX, in conjunction with Title III, constitute a scheme to illegally induce or compel the states.

(j) The taxes levied by the Act do not violate the Constitution but are within the general taxing power of Congress and they are not designed to expropriate money as charged by sub-paragraph (j).

(k) The taxes levied by Title IX are excise taxes, levied for the purpose of the Government, as authorized by the Constitution.

(l) Said taxes are not levied in an attempt to regulate matters over which Congress has no authority, as alleged. The fact that in the same Act appropriations are made does not as a matter of law so connect the tax and the appropriation as to work any illegality in either.

(31) Answering paragraph thirty-one of the amended bill, the defendants deny the allegations thereof and say that whether the plaintiff obeys the Act or refuses to obey the Act it has a full, fair, complete and adequate remedy at law of all of the things against which it seeks the injunction here, and that the plaintiff will not suffer irreparable injury, as that term is defined in the law, by any of the things alleged in this paragraph of the bill.

[fol. 79] Further answering, the defendants say that, in the event of an adjudication of constitutional invalidity of the Alabama Act by a court of last resort having jurisdiction in the premises, that the plaintiff has an adequate remedy for the recovery of any amounts which it may be required by the Alabama Act to pay in as contributions in its status as an employer and contributions withheld and paid in for and on account of its employees.

As a part of the answer to this paragraph, the defendants specifically refer to Paragraph 5½ of the Alabama Act; and they further say that upon inquiry made by the Attorney General of Alabama to the Secretary of the Treasury of the United States, as to the construction by that Department of the Federal Act insofar as is concerned any provision for the refund of moneys deposited under the Alabama Act in the Unemployment Trust Fund provided for by the Federal Act, in the event that the Alabama Act be held unconstitutional or invalid, that said Secretary of the Treasury forwarded to said Attorney General two rulings of said Department, addressed to the Attorney General of New York and to the Attorney General of California; and advised the Attorney General of Alabama that the said rulings so made represented the views of the Secretary of the Treasury; and that action would be taken, in the event that the contingency arose, as outlined therein.

The two rulings of the said Secretary of the Treasury are as follows:

"The Secretary of the Treasury,
Washington

April 22, 1936.

My Dear Attorney General:

I acknowledge receipt of your letter of April 16, 1936, in which you inquire the views of this Department concerning the disposition of funds deposited in the Unemployment

Trust Fund representing contributions by employers in the State of New York in the event that the United States Supreme Court should reverse the decision of the New York Court of Appeals sustaining the validity of the New York Unemployment Insurance Act.

It is the view of this Department that the money in the Unemployment Trust Fund standing to the credit of a State [fol. 80] agency is and will at all times remain the equitable property of the State or Agency in question. The Treasury Department, in accordance with its interpretation of the law, will under all circumstances honor requisitions duly made by any State agency, to the extent of any balance standing to its credit in the fund.

If the New York State Unemployment Insurance Act should finally be adjudged invalid, this would not in my opinion deprive the State of New York of its equitable interest in the Unemployment Trust Fund. The question how and by whom the money could then be 'duly' requisitioned appears to be primarily a question of state law. Upon satisfactory evidence of the authority of the State Industrial Commissioner to withdraw the money in that contingency, and subject to necessary procedural requirements, I should be prepared to honor a requisition for the full amount standing in the Unemployment Trust Fund to the credit of the State Agency.

Very truly yours, Wayne C. Taylor, Acting Secretary of the Treasury."

"The Secretary of the Treasury,
Washington

June 18, 1936.

"DEAR SIRS:

Receipt is acknowledged of your letter of June 4, 1936, referring further to the withdrawal of contributions deposited by the State of California in the Unemployment Trust Fund established by Section 904 of the Social Security Act, in the event said Act should be declared unconstitutional at some subsequent date.

I regret exceedingly that our letter of May 28 did not contain a copy of the letter of April 22, addressed to the Attorney General of the State of New York on the same subject. You will find a copy of that letter enclosed herewith.

Thank you for the information relative to Section 2 of the California Act as passed by the 1936 session of your legislature. In view of the fact that the California Act would automatically become inoperative in the event of the invalidation of title IX of the Social Security Act, you may be assured that this Department would honor a requisition duly made by the State Agency to the extent of any balance standing to its credit in the fund.

Very truly yours, Josephine Roche, Acting Secretary of the Treasury."

These defendants further allege that, in view of the Departmental Rulings hereinabove set out and in view of the [fols. 81-82] provisions of the laws of the State of Alabama, that, in the event the Alabama Act is declared invalid or unconstitutional by the Supreme Court of Alabama or by the Supreme Court of the United States, that the contributions exacted of the plaintiff and its employees may be refunded to it and to them.

(32) Answering paragraph thirty-two of the amended bill these defendants say that the controversy sought to be raised by the bill is necessarily with respect to Federal taxes and insofar as the bill seeks to have the Court declare rights or other legal relations of the plaintiff affecting the tax levied upon it by the Federal Social Security Act, there is no jurisdiction in this Court to render a declaratory judgment as prayed and the allegations of the thirty-second paragraph set up no fact from which a declaratory judgment would appear to be appropriate. If defendants are mistaken in this, then they say that the Collector of Internal Revenue of the United States at Birmingham, Alabama, is a necessary party to this cause and that the issue to him of notices prayed in the bill is not sufficient to justify the Court in the rendition of any declaratory judgment under the allegations of the bill.

(33) Answering paragraph thirty-three of the amended bill, these defendants deny that the plaintiff is entitled under the Declaratory Judgment Act of Alabama to have the Alabama Act or Title III and Title IX of the Federal Social Security Act declared invalid by decree rendered herein, as alleged in said paragraph 33.

And now having fully answered the bill, these defendants pray to be hence dismissed with their costs.

A. A. Carmichael, Individually and as Attorney General of the State of Alabama, Appearing Per Se and as Solicitor for all of the Defendants. Chas. L. Rowe and Peyton D. Bibb, Assistant Attorneys General of the State of Alabama. Inge & Stallworth, of Counsel.

[fol. 83] *Duly sworn to by A. A. Carmichael. Jurat omitted in printing.*

[fol. 84] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO SUBMISSION—Filed November 18, 1936

It is Agreed in the above styled cause that the plaintiff's application for an interlocutory injunction as prayed for in its amended bill of complaint shall be submitted to the statutory court upon:

A. The bill of complaint as amended;

B. The orders of the District Judge or Court which have been made or may be made in the case prior to submission;

C. Acceptance or proof of service and notice of such papers as have been served and of such notices and service as may be given.

D. Defendants' motion to dismiss;

E. Defendants' answer filed or to be filed before submission;

F. The written affidavits on behalf of plaintiff not to exceed twelve in number, with copies to be furnished to the attorneys for the defendants not later than the 10th day of November, 1936, with the further understanding that said affidavits shall be approximately in substance and in length as are the copies of affidavits which have been submitted to attorneys for the defendants contemporaneously herewith.

G. Written affidavits on behalf of defendants not to exceed twelve in number and to be filed in court with copies to be furnished to attorneys for the plaintiff not later than the 16th day of November, 1936.

It is further agreed and understood that such affidavits shall be considered by the Court as if affiants had appeared and testified personally as to the substance therein stated, with the further provision that only such portions of said affidavits shall be considered by the Court as may be material, relevant and competent herein, and that neither party admits the truth of the matters or the conclusions contained in the pleadings or affidavits offered by the opposing party.

It is also agreed by the parties, without plaintiff waiving insistence on its said application for an interlocutory [fol. 85] judgment, that said case will be submitted for final decree upon the same pleadings and evidence as set forth above and noted for the submission of the application for the interlocutory injunction.

Dated this 18th day of November, 1936.

Jos. F. Johnston, of Counsel for Plaintiff. A. A. *Carn*, of Counsel for Defendants.

[fol. 86] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING TEMPORARY INJUNCTION—Filed November 18, 1936

This matter coming on for hearing *that* upon application of plaintiff for a temporary injunction, and the same having been submitted upon the sworn allegations of the bill, and upon testimony offered and noted in open court,

And the court being of the opinion and finding that plaintiff is entitled to a temporary injunction as prayed for in the original bill,

It is, Therefore, Ordered and decreed as follows:

That an injunction to remain in effect until final decree herein be and the same is hereby granted, ordered and issued the plaintiff upon the same terms and upon the same conditions as the temporary restraining order issued herein

by the Honorable C. B. Kennamer, Judge of the District Court with the following exceptions and additions:

a. The expiration date of this temporary injunction shall be the date of final decree in the above entitled proceedings.

b. The Attorney General of Alabama, as counsel of record for the defendants, in open court consenting it is ordered that all payments made to the First National Bank of Montgomery, Alabama, as designated depository of this court in accordance with the terms of temporary order or orders heretofore granted herein and all such payments hereafter made in accordance with either the said tempo-
[fol. 87] rary order or orders or this temporary injunction, or any permanent injunction which may issue herein, shall be regarded and shall stand as payments to or for the account of the Alabama Unemployment Compensation Commission in such wise as to authorize certification by the Alabama Unemployment Compensation Commission of the payment of such sums for credit under Title IX of the Federal Social Security Act, but without prejudice to all parties in the matter, and subject to such further or supplemental orders as may be rendered herein.

Dated at Montgomery, Alabama, this 18th day of November, 1936.

(Signed) Samuel H. Sibley, Robert T. Ervin. C. B. Kennamer.

[File endorsement omitted.]

[fol. 88] In United States District Court

[Title omitted]

Stipulation as to Evidence—Filed January 30, 1937

It is hereby stipulated and agreed between counsel for plaintiff and defendants in the above styled cause that a full, true and correct statement of the evidence in said cause, under Equity Rule 75, consists of the following:

1. The affidavits introduced in evidence by plaintiff being the affidavits of Joseph Halfpenny, Allen Little, W. W. Fulgham. George F. Peter, A. R. Forsyth, H. D. Warner, Herbert S. Craigmile, Richard H. Childers, Alex C. Wellman, Herbert S. Salmon and J. M. Jackson, Jr.

2. The affidavits introduced in evidence by the defendants being the affidavits of F. W. Gist, J. L. Kaufman and Peyton D. Bibb.

3. The verified bill of complaint as last amended filed herein and treated as an affidavit in evidence.

4. The verified answer of the defendants filed in this cause (and treated as an affidavit in evidence.)

Albert A. Carmichael, Attorney General, State of [fol. 89] Alabama; Chas. L. Rowe, Assistant Attorney General, State of Alabama; Peyton D. Bibb, Special Assistant of the Attorney General of the State of Alabama; Nicholas E. Stallworth, First National Bank Building, Mobile, Alabama, Attorneys for the Defendants. Lucien D. Gardner, Jr., Birmingham, Alabama; Jos. F. Johnston, Birmingham, Alabama; Forney Johnston, Birmingham, Alabama, Solicitors for Plaintiff. Cabaniss & Johnston, Birmingham, Alabama, of Counsel for Plaintiff.

ORDER

The foregoing stipulation and the Statement of Evidence as therein stipulated is approved as a true, complete and properly prepared statement of the evidence at the trial of this cause, and may be filed in the clerk's office, and become a part of the record.

This, the 30 day of January, 1937.

Samuel H. Sibley, Circuit Judge. Robert T. Ervin, District Judge. Chas. B. Kennamer, District Judge.

[File endorsement omitted.]

[fol. 90] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF JOSEPH HALFPENNY—Filed November 17, 1936

STATE OF ALABAMA:

Before me, the undersigned authority for said county in said state, personally appeared Joseph Halfpenny who, being duly sworn, deposes and says:

Statement as to Qualifications and Sources and Bases of Statistical Conclusions

I am and have been for the past ten years engaged in the profession of statistician. I have taken complete courses in statistical methods. For approximately seven years I was Assistant Chief of the Bureau of Statistics of a large industrial concern. My business for the last ten years has been mainly connected with statistical researches and conclusions and economic surveys.

[fol. 91] I have made statistical researches and surveys in connection with matters arising under the Alabama Unemployment Compensation Statutes as hereinafter more fully referred to.

Attached to this affidavit and identified as the appropriately lettered exhibits are certain tables which present the statistical status of certain matters therein designated. In each instance the tables have been compiled by me or under my supervision, and, in my opinion as a statistician, they are substantially correct and present a substantially accurate presentation of the situations dealt with. In producing these tables I have used as the bases Census findings as published by the United States Bureau of Census and certain supplemental surveys and studies of the Census Bureau, I have also used statistical publications of the United States Bureau of Labor. In each instance the bases used by me has or have been the official publication or publications of one or the other of the governmental agencies above referred to. In a number of the tables the Census figures for the year 1930, dealing with volume of employ-

ment and similar matters are used. There has, of course, been no complete Census since 1930, and this is the last year for which comprehensive figures dealing with all the matters mentioned are available.

I am, however, in position to express, as an ascertained fact, that the levels and volumes of employment in the State of Alabama as they existed in the year 1930 were practically the same as they exist at the present time, except that there has been a substantial increase in the number of persons [fol. 92] employed in agriculture, the increase as indicated by Government Surveys being approximately 20%. There are kept by me continuous and progressive studies of fluctuations in respect of these matters, and from these studies, with all of which I have continuous familiarity, I have knowledge that the volume of employment existing in Alabama at the present time is approximately the same as for the year 1930; that is to say, the figures of employment and cognate matters for the year 1930 we know, from our statistical studies, to be the figures existing at the present time with the various pluses or minuses being only in minor percentages not sufficient in any way to affect the general trends therein shown. It should, therefore, be understood that wherever 1930 figures are given unless I have indicated to the contrary, substantially the same figures, the same percentages and the same statistical situation exists in the State of Alabama as of the present time.

Comments and Explanations as to Table "A"

Table hereto attached, designated as "A" shows as of the census year 1930 (known to closely approximate the statistical situation as of the present time) several groupings of employment as affected by, or excluded from, the operation of the Alabama Unemployment Compensation Act. The figure therein shown as grand total, 1,026,320, is the total number of persons gainfully employed, subdivided into those employed in the various occupations which are not exempt from the Act, the latter being shown in Column "A" by occupational groups, the total being 377,575.

[fol. 93] In Column "E" are shown by occupational groups the number of persons employed in the industries or lines of activity exempted from the Act, the total being 648,745.

Column "B" shows the workers in non-exempt industries as reported by industries in the 1930 census.

The margin of difference between the occupation census and reported by industries is approximately what is to be expected from statistical experience in matters of this nature.

Column "C" shows the employees of establishments which are in lines of business not exempted from the operation of the statute, but which establishments employ each less than eight persons, and also includes firm members and proprietors, It should be explained that the figures used in Column "C" are an estimated conclusion derived from the other figures given and from economic experience and test surveys, the variation in the figures used in Column "C" however, would not exceed five percent either way.

Column "D" shows the number of employees excluded neither by exemption nor by minimitude of personnel,—that is to say, the number of employees covered by the Act, and is derived by deducting the figures in Column "C" from the figures in Column "A".

Comments and Explanations as to Table "B"

Table hereto attached, designated as "B" shows the persons gainfully employed in Alabama by major occupational [fol. 94] groupings for the year 1930, the percentages represented by the said figures, and the comparative percentages for the United States as a whole. The occupational figures given in Table "B" are in groupings as shown by the census publications. Wherever the classification is the same as the classification in Table "A" the figures are the same, there being, however, more detailed break-downs in "A" than in "B".

Comments and Explanations as to Table "C"

Table hereto attached and designated as "C" presents a calculation of the revenue which will be produced by the Alabama Act, assuming a level of employment for the years 1936, 1937 and 1938 paralleling the year 1930. As heretofore explained comparative surveys and researches establish that the figures at the present time parallel the 1930 figures. For 1937 and 1938 the volume of wage increment is, of course, a matter of prediction. The figures shown for the years 1937 and 1938 are the revenues which will be pro-

duced under the Alabama Statutes for those years, if the wage increment for said years be the same as for 1930. The statutory rates are used for the periods in which the Act was an- will be effective in the current year, that is to say, as to employer contributions for the entire year and as to employee contributions for the last eight months of the year. The 1937 and 1938 figures shown in the table are for the entire year, (on an increasing scale as to employer contributions). The pay roll increments are derived by applying to total employment as disclosed in the census average earnings as ascertained by the census.

[fol. 95] Comments and Explanations as to Table "D"

Table hereto attached designated "D" shows in the case of wage earners and salaried employees comparatively the earnings at the several recognized rates of pay, the contributions made by employee and employer on account of the amount so earned, and the total maximum benefits which the employee would draw, assuming that he was unemployed for the greatest length of time compensible, and under the conditions most favorable to the drawing of maximum compensation; that is to say, assuming maximum unemployment to set in at the earliest time which qualifies for participation in the benefits provided by the Act.

In the table the hourly rates are set forth in accordance with the recognized gradations of earnings as to the wage class and the recognized major gradations of earnings as to the salaried employees, the highest wage bracket used being one dollar per hour and the highest salary bracket used being twenty-thousand dollars per annum.

[fol. 96] Statement as to Non-Existence of Surveys or Researches in Respect of Present, Past or Anticipated Incidence of Unemployment

I am familiar with all industrial economic surveys and researches which have been made in the State of Alabama within the last ten years or which have been at any time within the last ten years available in Alabama. No such data showing any general unemployment experience, absolute or proportional, have ever existed in Alabama, except that the Census of 1930 showed unemployment figures as of April first and November first of that year. However there being no figures previous or subsequent to show flow

and trend, and therefore, no competent average or competent tendency being determined or determinable, the State of Alabama is without any basis upon which to calculate or estimate unemployment probably to be anticipated even under the prevalence of normal conditions. Therefore, there are no statistical data from which the adequacy either of rates or contributions or rates of benefits could be determined.

I am unable to express an opinion as to whether rates of contribution and rates of benefits provided by the Alabama Act are too high or too low, and from the knowledge I have of the principles of statistical method I am in position to state that no other statistician and no economist could reach such a conclusion, there being an utter lack of base. Both the rates of contributions and the rates of benefits are neces- [fol. 97] sarily determined arbitrarily and without guide of standard.

The figures set forth in the various tables I have appended deal with known employment and known or ascertainable earnings. In this field we have affirmative figures. In the field of unemployment there has been no study, survey or compilation, and in the absence of such production of data, unemployment, existing and anticipated, contributions necessary to create adequate unemployment compensation, and the amounts which would be adequate compensation must necessarily remain neither known nor susceptible of estimation nor susceptible of being fixed except at arbitrarily selected figures.

This statement does not mean to suggest that individual plants could not, by analysis of their records and supplemented by investigation of representative groups leaving the service, arrive at an approximate constructive application of the Act applied to past years; but relatively few, if any, plants in the State can supply that information from records hitherto maintained and no reports for such information have heretofore been called for by public authority, State or Federal. Nor have there been any public hearings or testimony relating to the matter by any public or legislative authority in Alabama.

In short, as to employer and employe in the aggregate subject to the Act, there is involved not only a complete lack of statistics but absolutely incalculable variables as to the benefits which might be claimed under the operation of the Act.

[fol. 98] Actuarial Factors in State Unemployment Compensation Plan Prepared by Social Security Board, Washington, D. C., January, 1936

I am attaching hereto designated as "Exhibit E" a copy of a statement prepared and issued in January, 1936 by the Social Security Board of Washington, D. C. and entitled "Actuarial Factors in State Unemployment Compensation Plan (based upon standards of suggested Unemployment Compensation Bill prepared by Social Security Board, Washington, D. C., January, 1936)

Industrial Activity in Alabama

I am attaching hereto designated as Exhibit F, extract from University of Alabama Business News for February 1st, 1936 and October 1st, 1936. This indicates that business activity in Alabama as shown by composite index, in August 1936 is substantially the same as in 1930.

J. Halfpenny.

Subscribed and sworn to before me this 4th day of October, 1936. Sudie S. Bates, Notary Public.

[fol. 99]

TABLE "A" TO AFFIDAVIT

State of Alabama

Estimated Number of Employees Subject to the Unemployment Compensation Law Based on 1930 Census

Industries (Not exempt under Act)	A Total Employed Census of Population	B Total Employees Census of Industries	C Estimated and Reported Small Firms & Others Not Subject to Act	D Employees Subject to Act A minus C	D % of Column A
Manufacturing	150,858	133,551	27,225	123,633	81.95
Trade	81,279	87,850	25,440	55,839	68.70
Mining	34,959	33,781	1,400	33,559	95.99
Personal Service	26,710	.....	9,733	16,977	63.56
Building & Constr.	33,145	9,916	18,101	15,044	45.39
Transport & Communication	18,822	.....	7,581	11,241	59.72
Professional	10,097	.....	3,680	6,417	63.55
Forestry	5,169	.....	1,884	3,285	63.55
Miscellaneous	16,536	.....	7,356	9,180	55.51
Total	377,575	265,098	102,400	275,175	72.88

Industries (Exempted by Act)	E
Agriculture	492,818
Domestic Service	73,519
Steam Railroads & Water Transportation	26,178
Non-Profit Services	23,318
Professional Service	7,475
Public Service	10,782
Postal Service	3,846
Banking & Insurance	4,855
Miscellaneous	5,954
Total	648,745
Grand Total	1,026,320

Source: 15th Census U. S.
10/14/36

Summary:		%
Persons gainfully employed	1,026,320	=100.00
Employees subject to Act	275,175	= 26.81
Employees non-exempt Industries	377,575	=100.00
Employees subject to Act	275,175	= 72.88

[fol. 100] TABLE "B" TO AFFIDAVIT

Total Persons Gainfully Employed in Alabama by Occupation

	1930	Percentages Alabama 1930	U.S. 1930
All Persons—			
Agriculture	492,818	48.01	21.47
Forestry and Fishing	6,064	0.59	0.55
Extraction of Minerals	34,959	3.41	2.37
Manufacturing	185,419	18.07	29.32
Transportation	57,745	5.63	9.09
Trade	86,134	8.39	15.43
Public Service	10,782	1.05	2.17
Professional Service	40,890	3.98	7.02
Domestic & Personal Service	100,229	9.77	9.85
Industry Not Specified	11,280	1.10	2.73
Total	1,026,320	100.00	100.00

Source U. S. Census
10/14/36

[fol. 101] TABLE "C" TO AFFIDAVIT

State of Alabama

Calculation of Revenue from Levies of Unemployment Compensation Law on Basis of 1930

Industry	0.9% Employer (a) 1.0% Employees(b) 1936	1.8% Employer 1.0% Employees 1937	2.7% Employers 1.0% Employees 1938
Manufacturing	1,770,124	3,150,888	4,163,673
Trade	717,591	1,277,339	1,687,913
Mines and Quarries	528,828	941,334	1,243,905
Construction	217,436	387,045	511,452
Miscellaneous	65,983	117,452	155,205
Total	3,299,962	5,874,058	7,762,148

(a) Levy for 12 months.
(b) Levy for 8 months.

Source 15th Census U. S.
10/14/36

[fol. 102]

TABLE "D" TO AFFIDAVIT

Status of Employees in Day Rate and Salary Groups Regularly Employed from May 1st, 1936, to December 31st, 1935, and Then Becoming Totally Unemployed on January 1st, 1938, and Qualified to Receive Compensation

Showing Rate of Earnings and Contribution of Employees to Fund, Also Contribution of Employers to Fund, Together with Maximum Benefits

Occupation	Rate Per Hour	Earnings Week 40 hr.	Employees 1% to Dec. 31, '37	Company .9% '36 1.8% '37 12/31/37	Total Employee and Company	50% Wage Max. $15.00 16 Weeks	Additional Benefit 1.15 Wks.	Total
Unskilled:								
Com. Labor	.25	10.00	8.70	14.04	22.74	80.00	5.75	85.75
Occup. Lab.	.30	12.00	10.44	16.85	27.29	96.00	6.90	102.90
Gen. Helpers	.35	14.00	12.18	19.65	31.83	112.00	8.05	120.05
Semi-skilled:								
Craft Helpers	.40	16.00	13.92	22.47	36.39	128.00	9.20	137.20
Apprentices	.45	18.00	15.66	25.27	40.93	144.00	10.35	154.35
Handymen	.50	20.00	17.40	28.08	45.48	160.00	11.50	171.50
Skilled:								
Craftsmen	.55	22.00	19.14	30.89	50.03	176.00	12.65	188.65
Craftsmen	.60	24.00	20.88	33.69	54.57	192.00	13.80	205.80
Craftsmen	.65	26.00	22.62	36.51	59.13	208.00	14.95	222.95
Journeymen	.70	28.00	24.36	39.31	63.67	224.00	16.10	240.10
Journeymen	.75	30.00	26.10	42.12	68.22	240.00	17.25	257.25
Journeymen	.80	32.00	27.84	44.93	72.77	240.00	17.25	257.25
Journeymen	.90	36.00	31.32	50.56	81.88	240.00	17.25	257.25
Journeymen	1.00	40.00	34.80	56.16	90.96	240.00	17.25	257.25
Salaried:	Amount Per Year							
Salary	1,500.00	28.85	25.10	40.50	65.60	240.00	17.25	257.25
Salary	2,000.00	38.46	33.46	54.00	87.45	240.00	17.25	257.25
Salary	2,500.00	48.08	44.83	67.50	109.33	240.00	17.25	257.25
Salary	3,000.00	57.69	50.19	81.00	131.19	240.00	17.25	257.25
Salary	3,500.00	67.31	58.56	94.50	153.06	240.00	17.25	257.25
Salary	4,000.00	76.92	66.92	108.00	174.92	240.00	17.25	257.25
Salary	5,000.00	96.15	83.65	135.00	218.65	240.00	17.25	257.25
Salary	6,000.00	115.38	100.38	162.00	262.38	240.00	17.25	257.25
Salary	7,500.00	144.23	135.08	202.50	327.98	240.00	17.25	257.25
Salary	10,000.00	192.31	167.31	270.00	437.31	240.00	17.25	257.25
Salary	15,000.00	288.46	250.96	405.00	655.96	240.00	17.25	257.25
Salary	20,000.00	384.62	334.62	540.00	873.62	240.00	17.25	257.25

10/14/36

[fol. 103] EXHIBIT "E" TO AFFIDAVIT

Actuarial Factors in State Unemployment Compensation Plans (Based Upon Standards of the Suggested Unemployment Compensation Bill), Prepared by Social Security Board, Washington, D. C., January, 1936

[fol. 104] Actuarial Factors in State Unemployment Compensation Plans

Introduction

This memorandum has been prepared as an aid to the States in estimating the probable number of workers that will be covered by the Federal excise tax upon employers, the probable income that will be contributed, the possible effect of different waiting periods and of different rates of contributions, and the possible maximum duration of benefits that can be paid to the compensable labor force if the standards in the suggested State bill are followed.

With the exception of the State of Wisconsin, no State has had actual experience with unemployment compensation in this country and the Wisconsin act has been in effect too short a time to yield any actuarial experience. In lieu of such experience, it is necessary to estimate the benefits which could be paid in each State in the future under the provisions of the suggested bill. The best method of arriving at such an estimate of possible future benefits would be to assume that an unemployment compensation plan, similar to that proposed in the suggested bill, had been in effect in each State for a period of years, and then to study the hypothetical past experience as a guide to the future. Unfortunately, the dearth of State statistics on the unemployment problem makes such calculations for individual States very difficult in most instances. The only recourse when State statistics are wholly inadequate, is to estimate State behavior in terms of average figures for the United States.

The suggested State unemployment compensation bill provides that two years elapse between the initiation of collections of contributions and the initial payment of the benefits. Employment records will of course have to be instituted for administration purposes when the plan goes into effect and these records will furnish some data which

should be analyzed by each State before benefit payments are started. Such an analysis would probably indicate that corrections should be made in the estimates included herein.

[fol. 105] Coverage

The coverage of the suggested State unemployment compensation bill includes all gainful workers employed in private establishments employing eight or more employees within at least twenty weeks in a calendar year. This, of course, excludes the self-employed-farmers, farm tenants, unpaid farm helpers, independent hand tradesmen, professional people, owners, proprietors, and independent operators. The following employments are also exempted from the Federal tax: (1) agricultural labor; (2) domestic service in a private home; (3) employment on vessels on navigable waters; (4) employment of family members; (5) Federal employment; (6) employment by States or political subdivisions thereof; and (7) employment by religious, charitable scientific, literary, educational, and humane nonprofit organizations. The States will probably wish to follow this coverage fairly closely.[1]

Table I shows a rough approximation of the number of gainful workers who would have been covered in April, 1930, by a plan with the Federal coverage, had one been in operation for some years.

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[1] State and local Government employees were exempted from the Federal tax because the Federal Government cannot tax State or local governments. Employees of State and local Governments might well be covered except those on Governmental relief projects, elected or appointed public officers, government employees on an annual salary basis, and teachers in public schools, colleges, and universities. The State is also free to cover other employments exempted by the Federal tax except Federal employees and employees on vessels on navigable waters. It may also include employers of fewer than eight employees. The California, New Hampshire, New York, Utah, and Washington acts cover employers of four or more persons for thirteen or more weeks. The estimates in this memorandum, however, include only employees covered by the Federal tax.

These figures indicate the total number of workers (the employed plus the unemployed) who would have come within the scope of the plan at that date. If adjusted upward to account for natural growth of the working population, they would represent the maximum number of gainful workers who could be covered by the plan in the various States at any time.

The proportion of gainful workers that would have been covered by the plan varies considerably from State to State and from the National average, as may be seen in Table I. Massachusetts and Rhode Island would have had a maximum of about 56 per cent of their gainful workers covered in contrast to Mississippi which would have had only about 20 per cent of its workers participating in the plan. These variations exist because of differences in the industrial make-up of the States. States having a large agricultural population, for example, would have a smaller proportion covered than would States whose populations are primarily engaged in the manufacturing industries.

[fol. 106]

Table I.—Estimated Coverage of Assumed Unemployment Compensation System, by States, April 1930

State	Gainful workers		Compensable labor force	
	Total	Non-agricultural	Number (In thousands)	Percent of total gainful workers
United States	48,833	38,505	22,279	45.6
Alabama	1,026	540	312	30.4
Arizona	165	127	73	44.2
Arkansas	668	283	164	24.6
California	2,501	2,189	1,267	50.7
Colorado	403	297	172	42.7
Connecticut	677	643	372	54.9
Delaware	98	81	47	47.9
District of Columbia	244	243	112	46.0
Florida	599	469	271	45.2
Georgia	1,162	660	382	32.9
Idaho	162	96	56	34.5
Illinois	3,185	2,843	1,645	51.7
Indiana	1,251	1,003	580	46.4
Iowa	913	583	337	36.9
Kansas	694	466	270	38.9
Kentucky	907	553	320	35.3
Louisiana	816	521	301	36.9
Maine	309	258	149	48.3
Maryland	673	590	341	50.7
Massachusetts	1,814	1,762	1,019	56.2
Michigan	1,927	1,691	978	50.7
Minnesota	993	691	400	40.3
Mississippi	845	294	170	20.1
Missouri	1,458	1,089	630	43.2

Table I.—Estimated Coverage of Assumed Unemployment Compensation System, by States, April 1930—Continued

State	Gainful workers		Compensable labor force	
	Total	Non-agricultural	Number (In thousands)	Percent of total gainful workers
Montana	216	137	79	36.5
Nebraska	507	310	179	35.3
Nevada	43	34	20	46.6
New Hampshire	193	171	99	51.4
New Jersey	1,712	1,657	959	56.0
New Mexico	143	85	49	34.3
New York	5,523	5,279	3,084	55.8
North Carolina	1,141	642	371	32.5
North Dakota	240	107	62	25.8
Ohio	2,616	2,311	1,337	51.1
Oklahoma	828	525	304	36.7
Oregon	410	329	190	46.4
Pennsylvania	3,722	3,479	2,013	54.1
Rhode Island	297	289	167	56.2
South Carolina	688	341	197	28.6
South Dakota	248	117	68	27.5
Tennessee	958	587	340	35.5
Texas	2,207	1,374	795	36.0
Utah	170	129	75	44.1
Vermont	141	103	60	42.5
Virginia	880	608	352	40.0
Washington	665	562	325	48.9
West Virginia	570	454	263	46.1
Wisconsin	1,130	841	487	43.1
Wyoming	92	62	36	38.9
			Inclusion ratio — 57.86%	

[fol. 107] For a rough approximation of the number of workers in each State who will be covered by the Federal excise tax, see Table II which estimates the size of coverage under a plan assumed to have been initiated in 1933. Employment conditions have since improved somewhat and coverage would consequently be increased slightly. A plan initiated now would, of course, exclude from immediate participation the vast number of unemployed, many of whom will eventually be covered through reemployment in employments that would be covered by the plan, until the maximum estimated in Table I might be reached, or even exceeded. The speed with which this may happen depends largely upon the swiftness with which recovery takes place.

Employment and Unemployment Statistics by States

In constructing estimates for the use of the States all available statistics on unemployment and employment have

been studied. Virtually no data on unemployment by States are available except those in the United States Census of Unemployment of April, 1930, and a few scattered State or city unemployment censuses or surveys.

The compilation of employment statistics prior to 1930 was very limited. No indexes of general employment are known for these years. Several States published employment indicators of factory employees, representative of the manufacturing industries only, but most of these do not go back beyond the 1920's.

[fol. 108] TABLE II.—Estimated Number of Employed Workers Covered by States, 1933

State	Number of employed workers covered
United States	14,611,000
Alabama	204,000
Arizona	46,000
Arkansas	89,000
California	900,000
Colorado	109,000
Connecticut	254,000
Delaware	38,000
District of Columbia	110,000
Florida	171,000
Georgia	303,000
Idaho	38,000
Illinois	1,048,000
Indiana	375,000
Iowa	221,000
Kansas	190,000
Kentucky	229,000
Louisiana	202,000
Maine	116,000
Maryland	237,000
Massachusetts	658,000
Michigan	531,000
Minnesota	269,000
Mississippi	107,000
Missouri	419,000
Montana	47,000

State	Number of employed workers covered
Nebraska	120,000
Nevada	12,000
New Hampshire	76,000
New Jersey	591,000
New Mexico	29,000
New York	1,892,000
North Carolina	291,000
North Dakota	42,000
Ohio	894,000
Oklahoma	207,000
Oregon	148,000
Pennsylvania	1,215,000
Rhode Island	106,000
South Carolina	155,000
South Dakota	49,000
Tennessee	244,000
Texas	531,000
Utah	48,000
Vermont	40,000
Virginia	246,000
Washington	222,000
West Virginia	182,000
Wisconsin	335,000
Wyoming	23,000

[fol. 109] During the last four or five years more complete and reliable employment statistics have been gathered. Not only have States recognized the need for such data, but the United States Bureau of Labor Statistics has been compiling National employment indexes month by month, since 1929, for the following industrial groups: manufacturing, wholesale trade, retail trade, mining, transportation, telephone and telegraph, light and power, and hotels. In 1933 the scope of the field covered was enlarged by the addition of real estate, banking, insurance, and canning and preserving industries. Since 1932 these indexes have been broken down by States, resulting in the first comprehensive monthly State indicators of employment.

Utilizing the Bureau of Labor Statistics indexes and the United States Censuses of Occupations and Unemployment

of April, 1930, estimates have been made of the yearly average employment and unemployment within the compensable labor force by States for each year, 1930 through 1933, the results of which are shown in Table III. The dependability of these estimates is subject to question, at least for part of the period, because the data upon which they were based are inadequate and also because the limited time available for study necessitated the use of unrefined statistical methods. Several checks with other information indicate, however, that these estimates are at least fair approximations of what probably existed. They may therefore be used as a guide in the absence of better data.

More accurate indicators could probably be obtained from the statistical treatment of city surveys of unemployment where such are available, or from an examination of actual employment records within a State.

Variation in Unemployment Between States

According to Table III the degree of unemployment varies widely from State to State. Table IV in which the States are arrayed according to the estimated percentage of the compensable labor force unemployed in April, 1930, shows a range from approximately 20 per cent in Nevada, to about 8.8 per cent in South Dakota; the 1933 average indicates a high in Michigan over three times as great as the low in Georgia. However, as the period of observation is lengthened the range of variations between States seems to decrease. This conclusion is supported by the 1930-1933 average in which the peak of 35.9 per cent unemployed in Michigan is less than twice as large as the low of 19.1 per cent in Georgia.

(Here follow two photos, side folios 110 and 111)

TABLE III... ESTIMATES OF THE COMPENSABLE LABOR FORCE, 1930-1933, BY STATES

State	Average number of workers in compensable labor force				Average number employed (In thousands)				Average number unemployed					
	1930	1931	1932	1933	1930	1931	1932	1933	1930	1931	1932	1933	1930-33	1929
United States	28,879	28,319	28,317	28,416	19,104	16,768	14,248	14,611	3,175	5,551	8,069	7,805	72.3	85.7
Alabama	312	306	300	295	273	238	194	204	39	68	106	91	74.9	87.5
Arizona	73	73	73	76	63	54	47	46	10	19	28	30	70.7	88.3
Arkansas	186	180	153	149	145	127	96	89	18	33	58	60	73.7	88.4
California	1,387	1,279	1,288	1,303	1,080	950	881	900	187	329	407	408	76.2	88.2
Colorado	172	170	171	172	148	131	112	109	24	39	59	63	73.8	86.0
Connecticut	372	375	377	380	319	277	230	254	53	98	147	126	71.8	85.8
Delaware	67	67	66	67	62	56	53	58	5	11	13	9	79.7	89.6
District of Columbia	118	113	113	114	100	90	81	88	18	23	32	26	79.4	89.3
Florida	271	273	276	277	233	205	170	171	38	68	106	106	71.1	85.8
Georgia	382	371	366	356	339	296	256	303	43	75	110	53	80.9	88.7
Idaho	56	54	54	54	49	42	37	38	7	12	17	16	78.2	87.8
Illinois	1,648	1,635	1,641	1,670	1,383	1,215	1,016	1,068	268	440	649	633	70.3	84.1
Indiana	580	581	577	577	496	433	353	375	84	148	224	202	71.6	85.8
Iowa	337	335	332	329	301	266	228	221	36	69	104	108	76.2	89.2
Kansas	270	268	267	266	238	210	187	190	32	58	80	76	77.0	89.1
Kentucky	320	314	308	308	276	243	215	229	44	71	93	79	77.3	88.3
Louisiana	301	301	298	298	261	228	196	202	40	73	102	96	74.0	86.7
Maine	160	160	160	160	138	113	99	116	21	37	50	33	76.3	89.9
Maryland	341	343	343	344	301	318	236	237	40	26	119	107	78.8	88.3
Massachusetts	1,019	1,026	1,030	1,036	864	753	654	658	156	273	376	378	71.3	84.8
Michigan	978	989	996	1,008	783	679	553	591	195	310	443	475	64.1	80.1
Minnesota	408	399	397	396	345	303	272	269	36	96	125	127	74.7	84.3
Mississippi	170	161	153	147	150	133	108	107	20	29	45	40	78.8	88.2
Missouri	630	630	627	627	547	481	413	419	83	149	214	208	74.0	86.8
Montana	79	78	77	78	67	58	45	47	12	18	32	29	70.5	84.8
Nebraska	179	179	179	178	160	142	125	130	19	37	54	48	76.7	88.4
Nevada	20	20	20	20	16	14	12	12	4	6	8	8	67.5	80.0
New Hampshire	99	100	100	100	85	73	68	76	14	27	32	24	75.7	85.9
New Jersey	958	970	980	990	813	735	602	581	147	265	378	399	69.5	84.7
New Mexico	49	48	48	49	43	37	31	29	6	11	18	20	71.8	87.8
New York	3,084	3,111	3,134	3,150	2,635	2,313	1,950	1,915	448	799	1,184	1,244	70.6	83.4
North Carolina	371	369	366	366	320	278	242	281	51	91	124	75	74.8	86.3
North Dakota	62	61	59	58	55	49	45	42	7	12	14	17	79.3	88.7
Ohio	1,337	1,345	1,346	1,352	1,131	987	836	894	206	358	532	458	71.3	84.6
Oklahoma	306	303	300	299	263	227	195	207	41	76	105	92	74.8	88.8
Oregon	190	192	192	193	161	142	136	148	29	50	56	45	78.8	89.7
Pennsylvania	2,013	2,021	2,028	2,080	1,731	1,509	1,343	1,216	282	512	684	864	70.0	86.0
Rhode Island	167	168	170	171	138	120	100	108	29	49	70	63	68.8	83.6
South Carolina	197	193	187	183	176	158	139	155	21	44	58	28	80.6	89.3
South Dakota	68	67	66	65	62	55	48	49	6	12	17	16	80.8	91.2
Tennessee	340	334	329	334	299	262	225	244	41	72	104	90	77.6	87.9
Texas	795	788	793	796	698	613	521	531	97	186	272	265	74.3	87.8
Utah	75	74	73	73	64	56	49	48	11	18	24	27	72.6	85.3
Vermont	60	60	58	58	51	45	40	40	9	15	19	19	73.8	85.0
Virginia	352	347	343	339	312	273	231	246	40	74	112	93	76.9	88.4
Washington	325	327	327	328	279	245	219	222	46	82	108	107	73.8	85.6
West Virginia	263	263	263	264	230	202	174	183	33	61	89	82	74.8	87.1
Wisconsin	487	487	486	483	420	366	320	335	67	121	166	147	74.3	86.1
Wyoming	36	35	34	34	32	28	23	23	4	7	11	11	74.1	88.4

E III.— ESTIMATES OF THE COMPENSABLE LABOR FORCE, 1930-1933, BY STATES

Average number unemployed (In thousands)				Person-number unemployed				Percent of compensable labor force unemployed									
								Maximum					Minimum				
1930	1931	1932	1933	1930	1931	1932	1933	1930-33	1930	1931	1932	1933	1930-33	1930	1931	1932	1933
19,104	16,768	14,348	14,611	3,175	3,551	8,069	7,805	72.5	25.7	73.1	63.8	65.2	37.5	14.2	26.0	25.1	24.8
273	238	194	204	39	48	106	91	74.8	27.5	77.8	66.7	69.2	35.1	13.5	22.2	25.3	26.8
63	54	47	46	10	19	38	30	70.7	26.1	74.8	63.7	65.5	29.3	11.7	25.0	27.3	29.3
145	127	96	89	19	33	58	60	73.9	29.4	79.4	61.4	58.7	27.3	12.6	20.6	23.4	40.3
1,080	950	881	900	187	329	607	408	76.3	28.3	76.3	68.4	69.1	25.8	14.8	25.7	31.4	28.9
148	131	113	109	26	39	59	63	73.8	25.0	77.1	65.5	68.4	27.8	14.8	22.4	34.5	28.4
319	277	230	254	55	98	147	128	71.8	25.8	73.8	61.0	64.8	25.3	16.3	25.1	29.6	13.3
43	36	33	38	8	11	13	9	79.7	29.4	79.6	71.7	68.9	25.9	10.6	23.6	28.3	29.3
100	90	81	88	13	23	32	28	79.4	29.3	79.6	71.7	77.3	25.9	10.7	23.6	23.3	25.7
233	205	179	171	36	48	104	108	71.1	25.8	73.1	63.8	61.7	25.8	14.8	26.8	26.8	26.3
339	296	256	303	63	75	110	53	80.9	28.7	79.8	69.3	65.1	23.1	11.3	23.2	30.1	14.9
49	42	37	38	7	12	17	16	78.2	27.5	77.6	69.5	70.4	25.6	13.6	25.2	31.5	25.6
1,383	1,215	1,014	1,068	268	440	647	433	70.3	25.1	73.6	61.0	65.8	29.7	13.9	25.6	29.6	27.3
496	433	353	375	86	148	234	208	71.6	25.8	74.3	61.3	65.8	28.6	14.5	25.3	29.9	25.8
301	266	228	221	58	89	104	108	76.2	29.3	79.6	68.7	67.2	25.8	10.7	23.6	31.4	33.8
238	210	187	190	32	52	80	76	77.0	29.1	78.6	70.8	71.4	25.8	11.8	23.6	30.6	28.6
276	243	215	239	44	71	93	79	77.3	28.3	77.6	69.8	74.4	22.7	13.7	23.6	30.2	25.6
361	238	196	202	60	73	102	90	75.0	26.7	75.7	65.8	67.8	25.0	13.3	26.3	34.9	33.3
128	112	99	116	21	37	50	33	76.3	25.8	75.2	66.4	77.8	23.7	14.1	26.8	33.6	22.1
301	318	236	337	68	96	119	107	75.8	28.3	73.6	65.3	68.2	23.3	11.7	7.8	34.3	11.1
886	753	654	658	186	273	378	378	71.3	26.8	73.6	63.5	63.6	28.7	13.8	26.6	34.3	26.6
783	679	553	531	195	310	443	475	64.1	20.1	68.7	56.3	58.8	23.8	19.8	31.3	44.5	47.8
345	303	272	289	58	94	125	127	74.7	26.3	75.2	68.3	67.2	25.3	13.7	26.3	31.1	13.1
150	133	108	107	30	39	45	40	78.8	28.3	83.8	70.6	73.8	21.2	11.8	18.8	29.4	27.8
569	481	413	419	83	149	216	208	74.0	26.8	76.3	65.8	64.8	26.0	13.2	23.7	34.2	23.8
67	58	45	47	13	18	33	29	70.5	24.8	75.3	58.4	61.8	29.5	15.3	23.7	41.4	38.2
160	143	125	130	19	37	54	54	75.7	28.4	79.3	69.8	69.2	23.3	10.6	20.7	30.2	11.8
14	14	12	13	4	6	8	8	67.5	25.0	70.0	60.0	60.0	32.5	15.0	30.0	40.0	40.0
85	75	68	76	14	27	33	34	73.7	25.9	73.0	69.6	76.6	26.3	16.1	27.8	33.3	13.8
813	725	602	581	147	265	378	399	69.5	24.7	72.7	61.4	59.7	30.5	13.3	27.3	38.6	40.3
43	37	31	29	6	11	18	20	71.8	27.8	77.1	63.3	58.3	28.2	13.2	22.9	36.7	40.8
2,635	2,313	1,950	1,915	648	999	1,184	1,344	70.4	23.4	74.3	62.1	60.6	29.6	14.6	25.7	37.9	39.4
320	278	242	281	51	91	126	75	74.8	26.3	75.8	66.1	79.5	25.2	13.7	24.2	33.9	20.5
55	49	45	43	7	13	14	17	79.3	28.7	80.3	76.3	71.3	20.7	11.3	19.7	23.7	28.8
1,131	987	884	884	226	358	532	458	71.3	24.6	73.6	61.3	64.1	28.7	13.6	26.6	38.8	23.8
263	227	195	207	61	78	105	92	74.8	26.3	74.9	66.9	69.2	25.2	13.8	25.8	33.9	30.8
161	143	136	148	38	50	58	65	78.5	26.7	76.0	78.8	76.7	21.5	13.3	24.0	29.2	25.3
1,721	1,509	1,342	1,318	388	532	786	884	70.0	26.0	74.7	61.2	58.3	30.0	14.0	25.3	38.8	41.8
138	120	100	108	29	49	70	65	68.5	23.6	71.0	58.8	63.0	31.5	17.4	29.0	41.2	36.0
176	152	139	155	31	44	58	38	80.6	28.3	79.3	69.0	86.7	19.4	10.7	20.8	31.0	13.3
63	55	48	49	8	12	17	16	80.8	31.3	82.1	74.3	75.4	19.2	8.8	17.9	25.8	24.6
299	262	225	264	61	92	104	80	77.6	27.9	78.4	68.6	73.3	22.4	12.1	21.6	31.4	26.7
698	613	521	531	97	166	272	465	74.2	27.8	76.7	65.7	66.9	25.8	12.3	23.3	34.3	33.1
64	56	48	48	11	18	26	27	73.6	25.3	75.7	65.3	66.0	27.4	14.7	26.3	34.7	34.0
51	45	40	40	9	15	19	19	71.9	25.0	75.0	67.5	67.5	28.1	15.0	25.0	32.5	32.5
312	273	231	246	60	76	113	93	76.9	28.6	78.7	67.3	73.6	23.1	11.4	21.3	32.7	27.4
279	245	219	222	46	62	100	107	73.8	25.8	76.3	67.0	67.3	26.2	14.2	25.-	33.0	32.8
230	202	174	183	33	41	89	82	76.8	27.5	75.8	68.2	68.9	23.2	12.5	23.2	31.8	31.1
480	346	330	335	97	121	184	167	74.3	26.2	73.2	64.1	69.2	25.7	13.8	26.8	33.-	30.8
32	28	23	23	4	7	13	13	78.1	28.6	80.0	69.9	63.9	26.9	11.1	20.0	34.4	36.1

TABLE IV STATES RANKED BY AVERAGE PERCENTAGE OF UNEMPLOYMENT WITHIN THE CIVILIAN LABOR FORCE, APRIL 1930, 1933 AVERAGE, AND 1930-1933 AVERAGE 1/

April 1930			1933 Average			1930-1933		
State	Percent of compensable labor force unemployed	Ratio to average of all States (percent)	State	Percent of compensable labor force unemployed	Ratio to average of all States (percent)	State	Perce... compe... labor ...
United States	14.3	100.0	United States	34.8	100.0	United States	27.
1. Nevada	20.0	139.8	1. Michigan	47.2	135.6	1. Michigan	35.
2. Michigan	19.9	139.2	2. Pennsylvania	41.5	119.3	2. Nevada	32.
3. Rhode Island	17.4	121.7	3. New Mexico	40.8	117.2	3. Rhode Island	31.
4. Illinois	15.9	111.2	4. New Jersey	40.3	115.8	4. New Jersey	30.
5. Ohio	15.4	107.7	5. Arkansas	40.3	115.8	5. Pennsylvania	30.
6. Oregon	15.3	107.0	6. Nevada	40.0	114.9	6. Illinois	29.
7. New Jersey	15.3	107.0	7. New York	39.5	113.5	7. Montana	29.
8. Massachusetts	15.2	106.2	8. Arizona	39.5	113.5	8. New York	29.
9. Montana	15.2	106.2	9. Florida	38.3	110.1	9. Arizona	29.
10. Vermont	15.0	104.9	10. Montana	38.2	109.8	10. Florida	28.
11. California	14.8	103.5	11. Rhode Island	38.0	109.2	11. Ohio	28.
12. Utah	14.7	102.8	12. Illinois	37.2	106.9	12. Massachusetts	28.
13. New York	14.6	102.1	13. Colorado	36.8	105.2	13. Indiana	28.
14. Indiana	14.5	101.4	14. Massachusetts	36.4	104.6	14. Connecticut	28.
15. Washington	14.2	99.3	15. Wyoming	36.1	103.7	15. New Mexico	28.
16. Connecticut	14.2	99.3	16. Utah	36.0	103.4	16. Utah	27.
17. Maine	14.1	98.6	17. Indiana	35.0	100.6	17. Arkansas	27.
18. New Hampshire	14.1	98.6	18. Ohio	33.9	97.4	18. Colorado	27.
19. Florida	14.0	97.8	19. Texas	33.3	95.7	19. Washington	26.
20. Colorado	14.0	97.8	20. Missouri	33.2	95.4	20. Vermont	26.
21. Pennsylvania	14.0	97.8	21. Connecticut	33.2	95.4	21. Oklahoma	26.
22. Wisconsin	13.8	96.5	22. Iowa	32.8	94.3	22. Missouri	26.
23. North Carolina	13.7	95.8	23. Washington	32.5	93.4	23. Louisiana	26.
24. Minnesota	13.7	95.8	24. Louisiana	32.2	92.5	24. Wyoming	25.
25. Kentucky	13.7	95.8	25. Vermont	32.2	92.5	25. California	25.
26. Arizona	13.7	95.8	26. Minnesota	32.1	92.2	26. Texas	25.
27. Oklahoma	13.5	94.4	27. Nebraska	31.8	91.4	27. Wisconsin	25.
28. Louisiana	13.3	93.0	28. West Virginia	31.1	89.4	28. Minnesota	25.
29. Missouri	13.2	92.3	29. Maryland	31.1	89.4	29. West Virginia	25.
30. Alabama	13.1	91.6	30. California	30.9	88.8	30. Alabama	25.
31. Texas	12.8	89.4	31. Alabama	30.8	88.5	31. New Hampshire	24.
32. West Virginia	12.8	89.4	32. Oklahoma	30.8	88.5	32. Iowa	23.
33. New Mexico	12.2	85.3	33. Wisconsin	30.5	87.6	33. Idaho	23.
34. Texas	12.2	85.3	34. Idaho	30.4	85.1	34. Maine	23.
35. Tennessee	12.1	84.6	35. North Dakota	29.8	82.8	35. Oregon	23.
36. Kansas	11.8	83.2	36. Kansas	29.6	82.2	36. Nebraska	23.
37. Mississippi	11.8	82.5	37. Virginia	27.4	78.7	37. North Carolina	23.
38. Maryland	11.7	81.8	38. Mississippi	27.2	78.2	38. Virginia	23.
39. Arkansas	11.6	81.1	39. Kentucky	25.6	73.5	39. Kansas	23.
40. Virginia	11.4	79.7	40. Tennessee	24.7	71.0	40. Kentucky	23.
41. Georgia	11.3	79.0	41. South Dakota	24.6	70.7	41. Tennessee	23.
42. North Dakota	11.3	79.0	42. Oregon	23.3	67.0	42. Mississippi	23.
43. Wyoming	11.1	77.6	43. District of Columbia	23.1	66.4	43. Maryland	23.
44. Iowa	10.9	76.2	44. New Hampshire	23.0	66.1	44. North Dakota	23.
45. South Carolina	10.7	74.8	45. Maine	22.1	63.5	45. District of Columbia	23.
46. Nebraska	10.6	74.1	46. North Carolina	22.05	58.9	46. Delaware	23.
47. Delaware	10.6	74.1	47. Delaware	19.1	54.9	47. South Carolina	19.
48. District of Columbia	10.6	74.1	48. South Carolina	15.3	44.0	48. South Dakota	19.
49. South Dakota	8.8	61.5	49. Georgia	14.8	42.8	49. Georgia	19.

1/ Estimates derived from population and employment data reported by the United States Bureau of Agricultural Economics, and the United States Bureau of Labor Statistics.

TABLE IV STATES ARRANGED BY AVERAGE PERCENTAGE OF UNEMPLOYMENT WITHIN THE COMPENSABLE LABOR FORCE, APRIL 1930; 1933 AVERAGE; AND 1930-1933 AVERAGE

Ratio to average of all States (percent)	1933 Average: State	1933 Average: Percent of compensable labor force unemployed	1933 Average: Ratio to average of all States (percent)	1930-1933 Average: State	1930-1933 Average: Percent of compensable labor force unemployed	1930-1933 Average: Ratio to average of all States (percent)
100.0	United States	34.8	100.0	United States	27.5	100.0
[illegible]	1. Michigan	47.2	135.6	1. Michigan	35.9	130.5
[illegible]	2. Pennsylvania	41.3	119.3	2. Nevada	32.5	118.2
[illegible]	3. New Mexico	40.8	117.2	3. Rhode Island	31.5	114.5
[illegible]	4. New Jersey	40.3	115.8	4. New Jersey	30.5	110.9
[illegible]	5. Arkansas	40.3	115.8	5. Pennsylvania	30.0	109.1
[illegible]	6. Nevada	40.0	114.9	6. Illinois	29.7	108.0
[illegible]	7. New York	39.5	113.5	7. Montana	29.5	107.3
[illegible]	8. Arizona	39.5	113.5	8. New York	29.5	107.3
[illegible]	9. Florida	38.3	110.1	9. Arizona	29.3	106.5
[illegible]	10. Montana	38.2	109.8	10. Florida	28.9	105.1
[illegible]	11. Rhode Island	38.0	109.2	11. Ohio	28.7	104.4
[illegible]	12. Illinois	37.2	106.9	12. Massachusetts	28.7	104.4
[illegible]	13. Colorado	36.6	105.2	13. Indiana	28.4	103.3
[illegible]	14. Massachusetts	36.4	104.6	14. Connecticut	28.2	102.5
[illegible]	15. Wyoming	36.1	103.7	15. New Mexico	28.2	102.5
[illegible]	16. Utah	36.0	103.4	16. Utah	27.6	99.6
[illegible]	17. Indiana	35.0	100.6	17. Arkansas	27.3	99.3
[illegible]	18. Ohio	33.9	97.4	18. Colorado	27.0	98.2
[illegible]	19. Texas	33.3	95.7	19. Washington	26.2	95.3
[illegible]	20. Missouri	33.2	95.4	20. Vermont	26.1	94.9
[illegible]	21. Connecticut	33.2	95.4	21. Oklahoma 0	26.0	94.5
[illegible]	22. Iowa	32.8	94.3	22. Missouri	26.0	94.5
[illegible]	23. Washington	32.5	93.4	23. Louisiana	26.0	94.5
[illegible]	24. Louisiana	32.2	92.5	24. Wyoming	25.9	94.2
[illegible]	25. Vermont	32.2	92.5	25. California	25.6	93.8
[illegible]	26. Minnesota	32.1	92.2	26. Texas	25.6	93.8
[illegible]	27. Nebraska	31.8	91.4	27. Wisconsin	25.7	93.5
[illegible]	28. West Virginia	31.1	89.4	28. Minnesota	25.3	92.0
[illegible]	29. Maryland	31.1	89.4	29. West Virginia	25.2	91.6
[illegible]	30. California	30.9	88.8	30. Alabama	25.1	91.3
[illegible]	31. Alabama	30.8	88.5	31. New Hampshire	24.3	88.4
[illegible]	32. Oklahoma	30.8	88.5	32. Iowa	23.8	86.5
[illegible]	33. Wisconsin	30.5	87.6	33. Idaho	23.8	86.5
[illegible]	34. Idaho	29.6	85.1	34. Maine	23.7	86.2
[illegible]	35. North Dakota	28.8	82.8	35. Oregon	23.5	85.5
[illegible]	36. Kansas	28.6	82.2	36. Nebraska	23.5	85.5
[illegible]	37. Virginia	27.4	78.7	37. North Carolina	23.2	84.4
[illegible]	38. Mississippi	27.2	78.2	38. Virginia	23.1	84.0
[illegible]	39. Kentucky	25.6	73.6	39. Kansas	22.0	80.0
[illegible]	40. Tennessee	24.7	71.0	40. Kentucky	21.7	78.9
[illegible]	41. South Dakota	24.6	70.7	41. Tennessee	21.4	77.8
[illegible]	42. Oregon	23.3	67.0	42. Mississippi	21.2	77.1
[illegible]	43. District of Columbia	23.1	66.4	43. Maryland	21.2	77.1
[illegible]	44. New Hampshire	23.0	66.1	44. North Dakota	20.7	75.3
[illegible]	45. Maine	22.1	63.5	45. District of Columbia	20.6	74.9
[illegible]	46. North Carolina	22.05	58.9	46. Delaware	20.3	73.8
[illegible]	47. Delaware	19.1	54.9	47. South Carolina	19.4	70.5
[illegible]	48. South Carolina	15.3	44.0	48. South Dakota	19.2	69.8
[illegible]	49. Georgia	14.9	42.8	49. Georgia	19.1	69.5

[illegible] data reported by the United States Bureau of Agricultural Economics, and the United States Bureau of Labor Statistics.

[fol. 112] From Table IV a comparison may also be made between the percentage unemployed in each State and the percentage unemployed in the United States as a whole. When the ratio of the unemployed in a State to the average of all States is considered, the range in deviations from the National average is from 61.5 per cent to 139 9 per cent for April, 1930; from 42.8 per cent to 135.6 per cent for 1933, but only from 69.5 per cent to 130.5 per cent for the four-year period 1930-1933. It seems probable, therefore, that if the period of observation were extended to ten years or more, the several States might show even less variations and even smaller deviations from the National average.

It should be recognized that the number unemployed is not the only factor conditioning the behavior of an unemployment compensation plan; the length of time that the unemployed have been idle is an important conditioning factor also, and one which will vary somewhat from State to State according to the industrial and economic characteristics of the area. If there is a continuous turnover of labor so that large numbers of the labor force are without work for relatively short periods only, the drain on the unemployment compensation funds will be much greater than if the area includes large stranded populations subject to chronic unemployment. How much allowance should be made for such factors is almost impossible to estimate before State experience has been accumulated, and adjustments may become necessary as data are gathered under the operation of the plan.

[fol. 113] Income from Contributions

The funds for State unemployment compensation systems under the suggested bill are to be raised by a 3-per cent contribution based upon the payrolls of those employed in the covered employments.

Table V shows a rough approximation of the total income that would have been collected in 1933 by such a levy within each State had a plan been in operation for some time. If business conditions continue to improve, the income by 1938, when the full 3-per cent Federal tax becomes operative, will be substantially higher.

State incomes under the plan will vary year by year according to fluctuations in the number of covered persons employed as well as in their wages. Both factors will have

an important bearing on the total amount raised. Tracing the estimated income through the years 1922-1933 for the United States as a whole, a peak in yearly amounts collected appeared in 1929 which was about 80 percent greater than the low reached in 1933. Since low rates of pay tend to go hand-in-hand with high rates of unemployment, the years when incomes raised are smallest will also be the years when the number of unemployed eligible for benefits is greatest. And, unless reserves have been accumulated during less adverse times to meet depression emergencies, drastic measures will have to be taken to maintain a system on a solvent basis.

Benefits

The scarcity of data on employment and unemployment statistics by States makes it impossible to calculate accurately the amount and duration of benefits which can be allowed within each State. Estimates for the United States as a whole have been utilized and such estimates may be roughly adjusted for individual States according to the variation in their unemployment experience from the average in the United States.

[fol. 114]

Table V.—Estimated Wages and Salaries of Compensable Labor Force and Income from a Three Per Cent Contribution, by States, 1933

State	Total wages and salaries of gainful workers, 1929 (In millions)	Wages and salaries of total compensable labor force (In millions)		Three per cent contributions for total compensable labor force, 1933
		1929	1933	
United States	$59,797	$33,785	$17,602	$528,060,000
Alabama	[1] 589	[1] 333	[1] 173	5,190,000
Arizona	209	118	61	1,830,000
Arkansas	320	181	94	2,820,000
California	3,738	2,112	1,100	33,000,000
Colorado	445	251	131	3,930,000
Connecticut	995	562	293	8,790,000
Delaware	122	69	36	1,080,000
District of Columbia	400	226	118	3,540,000
Florida	528	298	155	4,650,000
Georgia	654	370	193	5,790,000
Idaho	147	83	43	1,290,000
Illinois	5,024	2,839	1,479	44,370,000
Indiana	1,512	854	445	13,350,000
Iowa	819	463	241	7,230,000
Kansas	658	372	194	5,820,000
Kentucky	689	389	203	6,090,000
Louisiana	622	351	183	5,490,000
Maine	326	184	96	2,880,000

Table V.—Estimated Wages and Salaries of Compensable Labor Force and Income from a Three Per Cent Contribution, by States, 1933—Continued

State	Total wages and salaries of gainful workers, 1929 (In millions)	Wages and salaries of total compensable labor force (In millions)		Three per cent contributions for total compensable labor force, 1933
		1929	1933	
Maryland	800	452	235	7,050,000
Massachusetts	2,709	1,531	798	23,940,000
Michigan	3,000	1,695	883	26,490,000
Minnesota	1,032	583	304	9,120,000
Mississippi	300	170	89	2,670,000
Missouri	1,614	912	475	14,250,000
Montana	237	134	70	2,100,000
Nebraska	449	254	132	3,960,000
Nevada	61	34	18	540,000
New Hampshire	217	123	64	1,920,000
New Jersey	2,752	1,555	810	24,300,000
New Mexico	120	68	35	1,050,000
New York	9,906	5,596	2,915	87,450,000
North Carolina	632	357	186	5,580,000
North Dakota	153	86	45	1,350,000
Ohio	3,855	2,178	1,135	34,050,000
Oklahoma	748	423	220	6,600,000
Oregon	492	278	145	4,350,000
Pennsylvania	5,481	3,096	1,613	48,390,000
Rhode Island	404	228	119	3,570,000
South Carolina	300	170	89	2,670,000
South Dakota	161	91	47	1,410,000
Tennessee	676	382	199	5,970,000
Texas	1,855	1,048	546	16,380,000
Utah	203	115	60	1,800,000
Vermont	145	82	43	1,290,000
Virginia	733	414	216	6,480,000
Washington	891	503	262	7,860,000
West Virginia	657	371	193	5,790,000
Wisconsin	1,309	740	386	11,580,000
Wyoming	108	61	32	960,000

[1] Leven, Moulton, and Warburton "America's Capacity to Consume"; Brookings Institution, Washington, D. C., 1934; pp. 175, table 19 (Income from Occupation).

[2] Index—0.565—$\frac{\text{Employed Compensable Labor Force for U. S.}}{\text{Total Employed Gainful Workers for U. S.}}$

[3] Index—0.521—$\frac{\text{Total Assessable Payroll, 1933}}{\text{Total Assessable Payroll, 1929}}$

[fol. 115] On the basis of the extent and duration of unemployment in the compensable labor force of the United States as a whole during 1922-1933, it has been estimated that sufficient funds would be collected from a 3 per cent tax upon payrolls to pay benefits equal to 50 per cent of wages for 11 weeks with a three-week waiting period and for 12 weeks with a four-week waiting period.

If over a period of time the rate of unemployment in an individual State tends to approximate the rate for the

Nation as a whole, there is some justification for using the National figure to obtain preliminary estimates of the possible behavior of State unemployment compensation systems over a period of years. However, if the average rate of unemployment for a State during 1930-1933 is estimated as higher than that for the United States during those years, the benefit period provided by the State law should be shorter than the National estimate would permit; on the other hand, if the unemployment rate for a State is lower than for the United States, conservatism suggests that the benefit period be kept equal to those permissable according to National statistics, rather than being increased.

The suggested bill proposes: (1) a rate of weekly benefits of 50 per cent of full-time wages, not to exceed a $15 maximum; (2) compensation of partial unemployment only to the extent that an employee's wages and benefits combined will not exceed two dollars more than the weekly benefit to which he would be entitled if totally unemployed; (3) a ratio of 1 week of benefits to every 4 weeks of employment; (4) certain disqualifications or penalties for unemployment caused by trade disputes, voluntary quitting, or discharge for misconduct; and other minor provisions all of which affect the maximum number of weekly benefits that may be paid in any year to an unemployed worker. Even if the above provisions are not changed, the maximum duration of benefits that may be provided is still contingent on what decision is reached as to (1) the contribution rate imposed, and (2) the length of the waiting period required. Since these are questions on which there may be greater differ- [fol. 116] ences of opinion than on the other provisions of the suggested State bill, the section which follows discusses the effect that different decisions will have in terms of the maximum durations of benefits payable.

Effect of Variations in Contribution Rates on Duration of Benefits

In order to provide longer durations of benefit than those indicated as possible with a 3 per cent contribution, it may seem desirable to some State legislatures to increase the rate of contribution above the Federal excise tax (either by increasing the employer's rate, by requiring employee contributions, or by providing for a contribution by the State). With a three-week waiting period, the 3 per cent contribution would roughly have permitted the payment of

11 weeks of benefit for the United States as a whole, whereas on the same assumptions, a 4 per cent contribution rate would have increased the duration of benefits to about 17 weeks, and a 5 per cent contribution would have made possible the payment of about 24 weeks of benefits. Thus the increase in the length of benefits is greater in proportion than the increase in the contribution rate. This is explained by the distribution of the unemployed according to the duration of their unemployment taken from surveys or censuses of unemployment, which show that a larger proportion of the idle are unemployed for short periods of time than for long periods. For example, on the basis of records of about 5,000,000 unemployed, 21 per cent were unemployed 4 weeks or less, 13 per cent were unemployed 5 to 8 weeks, while only 5 per cent were unemployed from 17 to 20 weeks. Consequently, as the duration of benefits is increased, each additional week added will require a proportionately smaller addition to the rate of contributions necessary to finance the benefits.

An additional 1 or 2 per cent contribution will therefore make possible an extension of benefits to a duration that will more adequately protect the unemployed against long periods of unemployment. The estimated effect of a higher rate of contributions on the maximum duration of benefits that each State can pay (with variable waiting periods) is shown in Table VI.

[fol. 117] Effect of the Waiting Period on the Duration of Benefits

As previously stated, the cost of compensating the earlier weeks of unemployment is greater than compensating the later weeks. It follows therefore that the length of the waiting period has a considerable effect upon the duration of benefits. According to actuarial estimates for the United States as a whole, a change of one week either way from a three-week waiting period would result in a corresponding change of one to three weeks in the length of benefits permissible.

Effect of Two Solvency Bases on Duration of Benefits

An unemployment compensation system may, of course, be designed to provide benefits only during periods of normal rates of unemployment and minor depressions. The

total contributions received by the unemployment fund may in this event be used to increase the duration of benefits. This will leave the relief of unemployment during major depressions to be met from other funds, or will require Government support of the unemployment compensation fund. For example, the income received by a hypothetical pooled fund for the entire United States is estimated as $6,972,000,000 from 1922 through 1930 and as $8,746,000,000 from 1922 through 1933 at the same rate of contribution, 3 per cent of payrolls. These amounts represent the estimated totals available for benefits during the years in which the funds were collected. Since unemployment was very severe during 1931, 1932, and 1933, the income of the fund would have been greatly reduced at the same time that expenditures for benefits would have been increased. Obviously the fund would not remain solvent unless the duration or amounts of benefits were reduced. The tabulation below shows the maximum possible duration of benefits with identical waiting periods, on two bases of solvency, paying out the entire income of the fund as benefits: A from 1922 through 1930 and B from 1922 through 1933.

[fol. 118]

Waiting period	Maximum possible duration of benefits from 3-per cent contributions	
	A[1] (1922-1930)	B[2] (1922-1933)
2 weeks	17	10
3 weeks	19	11
4 weeks	22	12

[fol. 119]

Summary

After a decision has been reached as to the contribution rate to be imposed and the length of the waiting period to be required, the maximum duration of benefits that can be provided may be determined. (Of course, decision as to these other factors will also be influenced by the effect each of them has on the duration of benefits.)

---

[1] A assumes that the entire income received from contributions within the period 1922-1930, inclusive, is expended for benefits within the period.

[2] B assumes that the expenditures for benefits during 1922-1930, inclusive, are kept conservative in order to meet the emergency of the depression years 1931-1933, when income falls and expenditures increase.

Table VI has been prepared to indicate the maximum duration of benefits which might be provided on the basis of unemployment experience from 1922-1933 in the United States as a whole, with contribution rates of 3, 4, or 5 per cent, and with waiting periods of 2, 3, or 4 weeks in 52 weeks.

TABLE VI.—Estimated Maximum Number of Weeks of Benefits Payable by States

(Based on Standards of Draft Bill)

Waiting period	Rate of Contribution		
	3 per cent	4 per cent	5 per cent
2 weeks	10	15	21
3 weeks	11	17	24
4 weeks [1]	12	18	26

It must be emphasized that these estimates should not be considered as guaranteeing that the durations of benefits indicated in Table VI can be paid in the actual experience of any one State. They are based on available statistics for the United States, but there is no certainty either that the estimates are entirely reliable, or that the employment and unemployment experience of the past will be repeated in the future. It is urged that those States that have more adequate statistics of their own rates of unemployment should make independent estimates in order to ascertain the duration of benefits possible under their own assumed unemployment compensation plans.

[1] On a cost basis a 2-week waiting period in 13 weeks is approximately equal to a 4-week period in 52.

[fol. 120]

EXHIBIT "F" TO AFFIDAVIT

Statistical Summary of Business Conditions in Alabama
1929-1935

Year	Coal Production 1,000 net tons	Coke Production 1,000 net tons	Cotton Consumption 100 running bales	Electric Energy Consumed 100,000 kwh	Pig Iron Production 100 gross tons	Indices Corrected for Trend and Seasonal Normal Equals 100						
						Coal	Coke	Cotton	Electric Energy	Pig Iron	Steel	Composite
1929	1,495	396	529	916	2,244	102.8	111.7	117.0	108.7	107.5	114.3	111.9
1930	1,298	332	439	889	1,953	89.2	92.8	94.2	100.0	92.9	83.5	90.5
1931	1,000	245	455	894	1,394	68.7	67.9	94.7	96.3	65.8	64.8	77.0
1932	655	117	470	825	550	45.0	32.0	95.1	85.6	25.8	30.3	55.5
1933	731	139	537	869	742	50.3	37.8	105.5	87.4	34.5	48.4	66.1
1934	800	176	459	875	951	55.0	47.4	87.8	85.9	43.9	54.3	64.1
1935	712	167	508	977	1,057	48.9	44.6	94.7	94.3	48.5	58.1	67.6
1936												
Aug.	888	255	620	1,206	1,481	61.4	68.7	116.7	115.3	70.3	90.8	91.3

Extract from University of Alabama Business News, February 1st, 1936 and October 1st,

[fol. 121] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF ALLAN LITTLE—Filed November 17, 1936

STATE OF ALABAMA,
County of Etowah:

Before the undersigned authority in and for the County and State aforesaid, personally appeared Allan Little, who being first duly sworn deposes and says that he is Agent and a Director of the Dwight Manufacturing Company, a corporation, hereinafter referred to as the "Company", and as such agent and director has knowledge of the facts herein deposed to and has the authority of the Company to make this affidavit.

I

The Company is a Massachusetts Corporation and has operated a cotton textile manufacturing mill in the State of Alabama for approximately forty years; that during this period there has been no cessation of operation at this mill of the Company due to conditions of unemployment and the employment at this mill has been practically continuous and in all substantial respects normal; that since the Company began to operate this mill none of the employees thereof, except for a brief period while some of such employees were on a strike, have received any aid, charitable or otherwise, from Federal, State County or Municipal agencies, that deponent is advised of or has been able to learn of; that on the contrary such employees have at all times, except in the case of a few of such employees who were on a strike for a brief period, as hereinabove referred to, been self supporting and able to take care of themselves and their families.

[fol. 122] II

The present operations of the Company are located in Etowah County, Alabama, and are known as the Alabama City Mill of the Dwight Manufacturing Company, the same being the only mill the Company has ever operated in the State of Alabama.

The records of the Company covering these operations show that its employment personnel for the following years has been in the employment of the Company for lengths of time in accordance with the following table:

	1930	1931	1932	1933	1934	1935	1936
1 to 5 years...	62.8%	58%	56%	58.6%	48.4%	53.5%	60%
6 to 10 years...	18.7	20.6	21.5	19.8	24.8	22.9	20.5
10 to 15 years...	9.8	11.5	11.9	11.3	13.8	11.8	9.4
15 to 20 years...	5.3	5.9	6.3	6.2	8	7.3	6.4
20 to 25 years...	3.4	4	4.3	4.1	5	4.5	3.7

That during the following years the average number of employees employed by the Company in its operation of this mill has been in accordance with the following table:

Average Number of Employees

Year	Men	Women
1930	973	575
1931	938	578
1932	1118	428
1933	1260	496
1934	1020	472
1935	1165	647

The amounts of the Company's payrolls for this mill during the years indicated is in accordance with the following table:

Pay Rolls

Year	Amount
1930	$1,050,784.75
1931	1,028,809.50
1932	883,004.86
1933	1,003,085.12
1934	852,371.15
1935	1,246,521.49

That during the following years the yardage of cloth produced by this mill has been in accordance with the following table:

Yardage

Year	Yards
1930	37,605,327
1931	54,263,376
1932	62,557,710
1933	56,447,525
1934	34,853,835
1935	54,863,574

[fol. 123] The decrease in the above tables for the year 1934 in the amount of payrolls and the total yardage are due to the fact that for a short period of time during the year 1934 there was a general strike of textile workers in the Southern Textile Mills, including this mill of this Company.

III

The Company during such time has sold and is now selling its products in the State of Alabama and also in various other portions of the United States. All of such sales and shipments to customers are f. o. b. cars to the order of the buyer at Gadsden, Alabama. The Company, in the conduct of its business over the period of its existence, has acquired a substantial and valuable good will with its customers and has for a great many years continuously sold its cloth to some of the same customers.

The Company pays substantial amounts of State and County ad valorem taxes on its property in the State of Alabama, annually, amounting to the approximate sum of $32,957.21; and also pays to the State of Alabama annually substantial amounts of taxes amounting to substantially the sum of $23,000.00.

The Company has in its employ in its operations in the State of Alabama 2,408 employees and has had in its employment during the times herein referred to approximately 1431 to 2453 employees.

The Company prior to and at the time of going into effect of the Federal Social Security Act and of the Alabama Unemployment Compensation Act, had in existence contracts for the sale and future delivery from time to time of cloth manufactured by the Company at this mill with persons, firms or corporations in the State of Alabama and with persons, firms or corporations in other states, many of which contracts have not yet expired or been completely performed, and for the performance of which the Company is bound and obligated. The prices stipulated in such contracts for the delivery of cloth were based upon the price which the Company was obligated under its contract with its employees to pay to employees for their services.

[fol. 124] There has been no cessation of operations in the business of the Company, nor has there been any interruption or cessation of operation in its business or in the actual employment of its employees at this mill during the past fif-

teen years, except that during the year 1934 when said strike of textile workers was in effect for a period of about 12 weeks. Nor has there been during such time any substantial curtailment in the total employee personnel regularly employed and reporting for work, except during the period of time when under the NRA Code promulgated by the Federal Government the Company was required to limit its operations to two shifts a day instead of three shifts a day. This mill of the Company is working now, and since such textile strike over two years ago has been working continuously and the Company has now employed and at work in this mill a personnel of 2,408 men and women.

That the operation of the Company and the employment of its employees has been such for the past eleven years down to and including the present time, that had the Alabama Unemployment Compensation Act and the Federal Social Security Act been the law and in effect no employee of the Company would have been eligible under the terms of said laws to receive any benefits; that there is no indication at the present time, judging the future by the past, or from any facts that now appear to be known or probable, that any of its employees will in the future become eligible for benefits under the provisions of the Acts other than the occasional benefits which might be claimed intermittently by an employee or employees dismissed for cause.

That the business of the Company is not seasonal, such as is likely to result in frequent or customary unemployment of all or any part of its personnel; nor is it subject to shutdown for weather or other natural causes or from minor accidents in the mill or from machinery, nor is there any likelihood of a lack of raw material or lack of market outlet or any other reason which will subject the mill to shutdown. That the business of the Company is entirely [fol. 125] separate both in ownership and operation from the business of any other person or corporation in the State of Alabama or elsewhere. That the Company has no connection or any kind with the employees of any other employers in the State of Alabama; and that any unemployment which might hereafter exist in any or all of such other businesses does not have any effect on the operation of the Company's business. That there is no plant or business in Alabama whose operations have been slowed down or employment curtailed as a result of the Company's

continued operation of its business or as a result of competition from the Company. On the contrary, the Company's continued operation of this mill has continuously and directly contributed to employment in other business in Alabama and in other States.

IV

The Company (assuming the constitutionality of the Alabama Unemployment Compensation Law) and its employees are subject to the exactions by way of "levies, contributions, taxes or pay roll deductions", imposed by said Act. The Company is by the terms of the Act liable for the payment of $9,854.26 for account of the exactions imposed against it directly with respect to employment from Jan. 1, 1926, through August 31, 1936, and for the period of time from May 1, 1936, through Aug. 31, 1936, is liable for the payment of $5,537.82 with respect to the statutory percentage of wages of its employees exacted from its employees, but for the collection and payment of which the Company is made liable, or a total of $15,392.08, the payment of which is sought to be collected by the Respondents in the above styled case. That the Company will be required to pay an estimated amount of $2744.00 per month with respect to wages during September, October, November and December, which amounts will become due on the 15th day of each succeeding month for the preceding month, or an estimated total for the year 1936 of $26,368.08. The amount of tax which the Company will be liable for calculated at the percentages prescribed by the Act for 1937 and 1938 will be approximately $48,706.00 and $64,362.00, respectively, or a total of $139,436.08 for the three year period.

[fol. 126] V

That substantially all of the employees of the Company, or more than eighty per cent, have notified the management that they object to and protest against any deduction being withheld from their wages in accordance with the provisions of the Alabama Unemployment Compensation Act and that they have voluntarily contributed out of their wages to a fund made up by the employees of this Company and the Gulf States Steel Company and other Com-

panies in the Birmingham District for the purpose of contesting in the Courts the validity of the Alabama Unemployment Compensation Act, and that such tests are now pending in the Circuit Court of Etowah County, Alabama, in suits having the name and style of P. O. Adams vs. Dwight Mfg. Co., and Hubert Killian vs. Gulf States Steel Company; that affiant has been informed and believes such information and on such information and belief deposes that in addition to over eighty per cent of the employees of this Company approximately 5,000 employees of other Alabama employers have contributed to the fund for the purpose of bringing and prosecuting the test suits above referred to; that therefore the Company is faced with the possibility of a multiplicity of suits and/or claims and demands in reference to such withdrawals as it makes for the account of its employees in accordance with the terms of the Alabama Unemployment Compensation Law, and that should the law be declared invalid it will be faced with great losses incident to the repayment of such sums in the event it deducts the same from the wages of its employees in accordance with the terms of the Act, the interest thereon, and large incidental costs in reference thereto.

That approximately eighty per cent of the employees of this company belong to an employees association which is now, and has for several years been, operating an insurance benefit fund which will probably be interfered with or displaced by the operation of the Alabama Unemployment Compensation Act and that for this and other rea-
[fol. 127] sons stated in this affidavit the employees of this Company almost as a unit object to the Act and protest against its enforcement.

(Signed) Allan Little

Sworn to and subscribed before me this the 29th day of Oct., 1936. Lillian Mann, Notary Public.

Copy.

[fol. 128] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF W. W. FULGHUM—Filed November 17, 1936

STATE OF ALABAMA,
Jefferson County:

Before the undersigned authority in and for the county and state aforesaid personally appeared W. W. Fulghum who, being first duly sworn, deposes and says that he is Secretary and Treasurer of the Alabama Fuel & Iron Company, a corporation, hereinafter referred to as "The Company", and as such officer has knowledge of the facts herein deposed to and has the authority of The Company to make this affidavit.

I

The Company is an Alabama Corporation and has operated coal mines in the State of Alabama for approximately twenty-five (25) years; that during this period of time there has been no cessation of operation at any of the mines of the company due to conditions of unemployment, but, on the contrary, employment at the mines of the company has been continuous and in all substantial respects normal; that since the operation of the Company began none of its employees have received any aid, charitable or otherwise, from federal, state, county or municipal agencies; that, on the contrary, they have at all times been self-supporting and able to take care of themselves and their families.

II

The present operations of the Company are located in St. Clair County, Alabama, and are known as its Margaret and Acmar Divisions.

[fol. 129] The records of the Company covering these operations show that its employment personnel for the following years has been in the employment of the company for lengths of time in accordance with the following table:

	1930	1931	1932	1933	1934	1935
1 to 5 years	52%	50%	50%	51%	52%	60%
5 " 10 "	23	22	22	19	18	14
10 to 15 years	15	16	16	16	15	13
15 " 20 "	6	6	6	7	8	7
20 " 25 "	4	5	5	7	7	6

That during the following years the average number of employees employed by the company in its operations has been in accordance with the following table:

	Year	Men
Average Number of Employees:	1930	1,143
	1931	1,166
	1932	1,106
	1933	1,027
	1934	1,187
	1935	1,516

The amounts of the Company's pay rolls during the years indicated is in accordance with the following table:

Pay Rolls

Year	Amount
1930	$978,350.00
1931	911,796.00
1932	578,012.00
1933	486,534.00
1934	592,963.00
1935	1,307,898.00

That during the following years the tonnage of coal produced by the company has been in accordance with the following table.

Tonnage

Year	Tons
1930	731,162
1931	702,774
1932	516,277
1933	486,534
1934	592,963
1935	840,909

The increases in the above tables for the year 1935 in average number of employees, in the amount of pay rolls, and the amount of tonnage are due to the fact that at this time there was a general strike of coal miners in the Alabama District, and extra shifts were put at work by this Company [fol. 130] for the purpose of taking care of an abnormal increase in business due to the shut down on account of the strike of substantially all of the other coal mines in the district.

III

The Company during such time has sold and is now selling its products in the State of Alabama, and also in various other portions of the United States. All of such sales and shipments to customers outside the State of Alabama are f. o. b. cars to the order of buyer, Margaret and Acmar, Alabama. The Company in the conduct of its business over the period of its existence has acquired a substantial and valuable good will with its customers and has for a great many years continuously sold its coal to some of the same customers. For instance, it has continuously sold coal to the Central of Georgia Railway Company for about 25 years, to the Ocean Steamship Company at Savannah, Georgia, for about 25 years, to Jno. A. Walker & Company, at Columbia, Tenn., for about 20 years, and to D. M. White & Son, at Goodwater, Ala., for about 18 years.

The Company pays substantial amounts of State and County ad valorem taxes on its property in the State of Alabama annually, amounting to the approximate sum of $17,200.00; and also pays to the State of Alabama annually substantial amounts of taxes, amounting to substantially the sum of $27,365.00.

The Company has in its employ in its operations in the State of Alabama fifteen hundred employees, and has had in its employment during the times herein referred to approximately one thousand to fifteen hundred employees.

The company prior to and at the time of the going into effect of the Federal Act and of the Alabama Act above referred to, had in existence contracts for the sale and future delivery from time to time of coal mined by plaintiff for delivery with persons in the State of Alabama, and in other States, many of which contracts have not yet expired or been completely performed, and for the performance of which the company is bound and obligated. The [fol. 131] prices stipulated in such contracts for delivery of coal were based upon the price which the company was obligated under its contract with its employees to pay its employees for their services.

There has been no cessation of operations in the business of the company; nor has there been any interruption or cessation of operation in its business or in the active employment of its employees for a longer period than a few days at a time, and never for a period as long as a single

week during said entire time. Nor has there been during such time any curtailment in the total employee personnel regularly employed and reporting for work. The minues of the company are working now and during the times herein above referred to have been working continuously. The company has now employed and at work in its operations a personnel of fifteen hundred men.

That the operation of the company and the employment of its employees has been such from the time of the beginning of its operations, down to and including the present time; that had the Alabama Unemployment Compensation Act and the Federal Social Security Act been the law and in effect, no employee of the company would have been eligible under the terms of said laws to receive any benefits; that there is no indication at the present time, judging the future by the past, or from any facts that now appear to be known or probable, that any of its employees will in the future become eligible for benefits under the provisions of the Acts other than an occasional benefit which might be claimed intermittently by an employee or employees dismissed for cause.

That the business of the company is not seasonal, such as is likely to result in frequent or customary unemployment of all or any part of its personnel; nor is it subject to shutdown for weather or other natural causes, or from accidents in the plant or from machinery, or lack of raw material, or lack of market outlet, or other reasons. That the business of the company is entirely separate both in ownership and operation from the business of any other [fol. 132] person or corporation in the State of Alabama or elsewhere. That the Company has no connection of any kind with the employees of any other employers in the State of Alabama, and that an unemployment which might hereafter exist in any or all of such other businesses does not have any effect on the operation of the company's business. That there is no plant or business in Alabama whose operations have been slowed down or employment curtailed as a result of competition from plaintiff. On the contrary, plaintiff's continued operation of its business has continuously and directly contributed to employment in other business in Alabama, and in other states.

In deposing that the business of the company is not seasonal and that its employment has been uninterrupted, af-

fiant does not intend to testify that it has operated its mines each and every working day. There have been work days during the slack season when the mines have not been in operation. However, such idle work days have not in any way produced any unemployment among its employees because of a system which has been in operation by the company for a good many years which provides for each employees farming a certain required amount of acreage, raising a certain required number of hogs, and producing a certain required amount of garden food and canning a certain required amount of fruits and vegetables. In charge of this work the company has an agricultural expert who supervises it. The company furnishes to each employee acreage, mules, seed and other necessary equipment. As a result of this method of business not only have the employees of the company lived in comfort, but they have had many luxuries. They have not only never received a cent of assistance or relief, but have been able, out of their earnings, to furnish assistance and relief to others less fortunate.

[fol. 133] Actual figures taken from our records, which are correctly kept, show that our employees produced the following products for the years 1932, 1933 and 1934:

	1932	1933	1934
Corn	16,361 bu.	34,990 bu.	28,148 bu.
Potatoes	18,435	18,995	18,539
Peas	2,216	2,252	1,870
Canning	100,218 qt.	119,890 qt.	100,580 qt.
Hogs	894	1,765	1,422
Weight (dressed)	165,032 lbs.	355,110 lbs.	302,278 lbs.
Sorghum	None	2,583 gal.	496 gal.

IV.

The Company (assuming the constitutionality of the Alabama Unemployment Compensation Law) and its employees are subject to the exactions by way of "levies", contributions, taxes or pay roll deductions" imposed by said Act. The Company is by the terms of the Act liable for the payment of $8,406.67 for account of the exactions imposed against it directly with respect to employment from January 1, 1936, through August 31, 1936, and for the period of time from May 1, 1936, through August 31, 1936, is liable for the payment of $4,230.62 with respect to the statutory percentage of wages of its employees exacted from its employees but for the collection and payment of

which the company is made liable, or a total of $12,637.29, the payment of which is sought to be collected by the respondents in this case. That the company will be required to pay an estimated amount of $2,500.00 per month with respect to wages during September, October, November and December, which amounts will become due on the 15th day of each succeeding month for the preceding month, or an estimated total for the year 1936, of $22,637.29. The amount of the tax which the company — liable for at the percentages prescribed by the Act for 1937 and 1938 will be approximately $42,000.00 and $56,000.00, respectively, or a total of $120,637.29 for the three year period.

V

That substantially all of the employees of the company, or more than ninety per cent, have notified the management [fol. 134] that they object to and protest against any deductions being withheld from their wages in accordance with the provisions of the Alabama Unemployment Compensation Act and have voluntarily contributed out of their wages to a fund made up by employees of the Gulf States Steel Company, of the Dwight Manufacturing Company and of other companies in the Birmingham District for the purpose of contesting in the courts the validity of the Alabama Unemployment Compensation Act, and that such tests are now pending in the Circuit Court of Etowah County, Alabama, in suits having the name and style of P. O. Adams vs. Dwight Manufacturing Company and Hubert Killian v. Gulf States Steel Company; that affiant has been informed, believes such information, and on such information and belief deposes that in addition to the ninety per cent. of the employees of this company, approximately five thousand employees of other Alabama employers have contributed to the fund for the purpose *for the purpose* of bringing and prosecuting the test suits above referred to; that, therefore, the company is faced with the possibility of a multiplicity of suits and/or claims and demands in reference to such withdrawals as it makes for the account of its employees in accordance with the terms of the Alabama Unemployment Compensation Law, and that should the law be declared invalid it will be faced with great losses incident to the repayment of such sums in the event it deducts the same from the wages of

its employees in accordance with the terms of the Act, the interest thereon, and large incidental costs in reference thereto.

This 28th day of October, 1936

(Signed) W. W. Fulghum.

Subscribed and sworn to before me, this 28th day of October, 1936. (Signed) Eddie J. Sandlin, Notary Public. (Seal.)

Copy.

[fol. 135] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF GEORGE F. PETER

STATE OF ALABAMA,
Shelby County:

Before the undersigned authority in and for said State in said County, personally appeared George F. Peter who, being first duly sworn, deposes and says that he is the President of Southern Coal & Coke Company, plaintiff in the above styled cause, and hereinafter referred to as the company, and as such officer has knowledge of the facts hereinafter deposed to, and is authorized by said company to make this affidavit; that affiant deposes and says as follows:

I

The plaintiff, Southern Coal & Coke Company, hereinafter called the company, is a corporation duly organized and existing under the laws of the State of Delaware, and is duly qualified, in accordance with the laws of the State of Alabama, to do business in Alabama, and has been qualified so to do and has continuously transacted business in said [fol. 136] State since the year 1918. The company's immediate predecessor in title was engaged in said business in the State of Alabama for more than nineteen years immediately preceding the company and operated under the corporate name of Southern Coal & Coke Company, and was an Alabama corporation.

That company now has and has had continuously since the year 1925 investment in the State of Alabama in excess

of one hundred thousand dollars in lands, leases and plant property and equipment at its place of business at or near Boothton, Shelby County, State of Alabama, for the conduct of its business.

The business carried on and conducted by the company in said State is the mining, sale and distribution of coal, the ownership of coal lands either by direct title or under leases, the sale and disposition of property, the operation of a commissary, the renting and leasing of houses, and other business incidental to the mining and sale of coal; all of its employees live and perform their duties in the State of Alabama.

The company's principal office and place of business in the State of Alabama is and has been, during all the time hereinabove referred to, in Shelby County, Alabama, and the company, since 1918, has been and is a citizen of and having its legal residence and domicile in the State of Delaware.

The Company, during such time, has sold and is now selling its products in the State of Alabama, and also in various other portions of the United States. All of such sales and shipments to customers outside of the State of Alabama [fol. 137] are f. o. b. cars to the order of buyer, Boothton, Alabama. The company in the conduct of its business over the period of its existence has acquired a substantial and valuable good will with its customers and has for a great many years continuously sold its coal to some of the same customers.

The company pays substantial amounts of State and County ad valorem taxes on its property in the State of Alabama annually, and also pays to the State of Alabama annually substantial amounts of other taxes, the total so paid amounting to substantially the sum of $7,300.00.

The company has in its employ in its operations in the State of Alabama three hundred employees, and has had in its employ, during the time herein referred to, approximately three hundred employees.

Plaintiff has operated its mines and business during the entire period of its existence. Coal production in Alabama is of a seasonal nature. As an illustration of this, the average days of plaintiff's operations (which is fairly consistent with the operations of other companies in Alabama engaged as is plaintiff in the mining and sale of domestic

and steam coal) for the past six years has been 193 days worked in 1930, 206 in 1931, 116 in 1932, 186 in 1933, 214 in 1934 and 159 in 1935; and that the average days that the operations have been idle have been 83 work days in 1930; 70 in 1931; 160 in 1932; 90 in 1933; 50 in 1934; and 105 in 1935. The fewer days of operation and the larger number of idle days in 1932 and the first part of 1933 were due to the fact [fol. 138] that at this time plaintiff reduced its employment personnel by approximately forty men (this reduction being the direct result of the loss by the company of one of its valuable accounts on account of the fact that this customer changed its fuel requirements from coal to oil) and the decrease of average days operated and increase of average days idle for the year 1935 were due to the fact that a general strike existed in the coal fields of Alabama, including the employees of the plaintiff, for fifty days during this year. Plaintiff avers that notwithstanding the seasonal nature of its business, the average labor turnover of the plaintiff during the same years (with the exception of an increase in 1932 and 1935 due to the loss of the account and the strike above referred to) has been approximately 5 per cent. Plaintiff avers that the small per cent of labor turnover in its business is due to two causes, (a) the fact that a large percentage of plaintiff's employees have been continuously in its employ for a year many years and when there has occurred a cessation of work due to the seasonal nature of the business, or for other causes, instead of discharging such employees, it has been and will continue to be the policy of the plaintiff to divide the work that is available among all employees; (b) because of the fact that some of plaintiff's employees have been recruited from the farm population and during times of inability to work in the mines, secured the additional needed support to prevent them from becoming public charges or supported by relief or other funds due to unemployment, by farming and gardening as an additional means of support for themselves and [fol. 139] their families during times of unemployment. Plaintiff further avers on information which he has received and believes that the same situation exists in the coal industry in the State of Alabama as a whole; that a large number of miners of Alabama have been recruited from the farm population in the general vicinity of the mines, and

make use of these farms as bases during the time of unemployment.

The company, during all of such times and during the present time, has been and is in competition in the sale of its coal not only with coal operators mining coal in the State of Alabama, but with those mining coal in other States, particularly the States of Tennessee and Kentucky; that such competition has been and is so close and keen with its competitors in the other States that a very small differential in the sale price per ton of coal is sufficient to cause the company to lose a large portion of its business to its out of State competitors; that it has suffered, and will continue to suffer, its keenest competition with hydro-electricity, oil and natural gas distributors who are engaged in business in the State of Alabama, and who on account of the fact that in the manufacture and distribution of their products require a much smaller employment personnel, are, by reason of being required under the Alabama Unemployment Compensation Act to pay a substantially less amount of taxes or contributions, enabled to furnish even more and keener competition.

[fol. 140] II

That the operation of the company and the employment of its employees has been from the time of the beginning of its operations, down to and including the present time; that had the Alabama Unemployment Compensation Act and the Federal Social Security Act been the law and in effect, no employee of the company would have been eligible, under the terms of said laws, to receive any benefits except probably some portion of the forty by which its employment personnel was reduced as aforesaid; that there is no indication at the present time, judging the future by the past, or from any facts that now appear to be known or probably, that any of its employees will in the future become eligible for benefits under the provisions of the Acts other than an occasional benefit which might be claimed intermittently by an employee or employees dismissed for cause.

That the business of the company is not seasonal in the sense such as is likely to result in frequent or customary unemployment of all or any part of its personnel; nor is it subject to shut-down from weather or other natural causes, or from accidents in the plant or from machinery, or

lack of raw material, or other reasons. That the business of the company is entirely separate, both in ownership and operation, from the business of any other person or corporation in the State of Alabama, or elsewhere. That the company has no connection of any kind with the employees of any other employers in the State of Alabama, and that any [fol. 141] unemployment which might hereafter exist in any or all of such other businesses does not have any effect on the operation of the company's business. That there is no plant or business in Alabama whose operations have been slowed down or employment curtailed as a result of plaintiff's continued operation of its business or as a result of competition from plaintiff. On the contrary, plaintiff's continued operation of its business has continuously and directly contributed to employment in other businesses in Alabama, and in other States.

III

Plaintiff avers that under the terms of the Alabama Act, from January 1, 1936, through August 31, 1936, plaintiff became liable to the Commission in the sum of $3,519.70, which amount, in accordance with the contribution instructions of the Commission, and in accordance with the order of the Commission, became due and payable to the Commission on or before the 5th day of October, 1936.

Plaintiff further avers that the Commission demanded of the plaintiff prior to the filing of the bill of complaint herein the payment of said amount, and declined to make any further extensions in reference to said payments. That the company has been required and has been ordered by the Commission to pay an estimated amount of $600.00 per month with respect to wages during September, October, November and December, which amounts will become due on the 15th of each succeeding month for the preceding month, or an estimated total for the year 1936 of $5,900.00. The amount of the tax which the company will become [fol. 142] liable for at the percentage prescribed by the Act for 1937 and 1938 will be approximately $11,000.00 and $15,000.00 respectively, or a total of $32,000.00 for the three-— period.

IV

That in addition to the payment of state and county taxes referred to in Paragraph I hereof, the company has paid to

the Federal Government taxes annually in substantial amounts.

That no disagreements or disputes are pending between plaintiff and its employees and that plaintiff has in existence contracts of employment with all its employees, and which provide for the rate of pay to be paid plaintiff's employees so long as they remain in its employ (the term of employment, however, being subject to the will of either party), said contracts as to rates of pay not expiring until ——, 1937.

That so far as affiant knows or has been informed no agency existed in Alabama prior to the adoption of the Alabama Unemployment Compensation Act for the compilation or analysis of unemployment statistics or data other than the State and Federal Relief Agencies which dealt with the matter solely from the standpoint of relief; that no bureau or administrative agency of the State had any staff equipped for study of the data necessary to estimate the requirements of a compulsory unemployment compensation law or plan; no such studies as to Alabama were or are in existence prior to or since the adoption of the Act; the Legislature had undertaken none either before or during the passage of the Act. That plaintiff, and as far [fol. 143] as affiant knows or has been informed no other employer of labor in the State of Alabama, was called upon, before the adoption of the Act, for its records necessary to the constructive application of the schedules or to determine the rate or levy or probably benefits for any test period, and no information of any kind was sought by any one from the plaintiff as to its prior record of unemployment among its employees or as to the need of plaintiff's employees on account of unemployment in the past, or as to any estimate which might be made as to the need in the future.

That plaintiff is subject to and obeys all laws of Alabama regulating or touching the relation of employer and employee, such as the Workmen's Compensation Act, the laws relating to the employment of minors, the laws relating to the operation of coal mines, and that it has not, in any public investigation, been found or reported to be likely to contribute to unemployment in Alabama.

That if plaintiff is required to keep its books, to make and file reports with the Commission, to collect contributions from its employees and remit these contributions to the Commission, and to do the other things pursuant to the

terms of the Act and the orders of the Commission, the performance of such acts will not only be extremely inconvenient to the plaintiff but the cost of doing the same will be a very substantial sum. It is impossible to estimate the amount of such additional cost because of the fact that it is impossible to tell with any degree of certainty as to what [fol. 144] will be required of the plaintiff under the terms of the Act. Affiant deposes, however, that the cost, as aforesaid, will be substantial, requiring the employment of additional clerical help and the expenditure of other sums necessary in carrying out the orders of the Commission.

George F. Peter.

Subscribed and sworn to before me this 7th day of November, 1936. W. H. Lyman, Notary Public. (Seal.)

[fol. 145] In United States District Court

[Title omitted]

Affidavit of A. R. Forsyth.

State of Alabama,
Jefferson County:

Before the undersigned authority in and for the County and State aforesaid personally appeared A. R. Forsyth, who being first duly sworn, deposes and says that he is Vice President and Treasurer of the Gulf States Steel Company, a corporation, hereinafter referred to as "The Company", and as such officer has knowledge of the facts herein deposed to and has the authority of The Company to make this affidavit.

I

The Company is a Delaware Corporation and has been engaged in the manufacture of steel products in the State of Alabama for approximately twenty-three (23) years; that during this period of time there has been no cessation of operation of the manufacturing plants of the company due to conditions of unemployment with the exception of one brief period about the year 1921, but, on the contrary, employment at the manufacturing plants of the company has been continuous and in all substantial respects normal.

II

The Company during such time has sold and is now selling its products in the State of Alabama, and also in various other portions of the United States. The company in the conduct of its business over the period of its existence has acquired a substantial and valuable good will with its customers and has for a great many years continuously sold its products to some of the same customers.

[fol. 146] The Company pays substantial amounts of State and County ad valorem taxes on its property in the State of Alabama annually, amounting on the average to the approximate sum of $115,000.00, and also pays to the State of Alabama annually substantial amounts of other taxes, amounting to substantially the sum of $35,000.00.

The Company has in its employ in its operations in the State of Alabama, 3,019 employees.

The Company prior to and at the time of the going into effect of the Federal Act and of the Alabama Act above referred to, had in existence contracts for the sale and future delivery from time to time of products manufactured by the company for delivery with persons in the State of Alabama, and in other States, many of which contracts had not expired or been completely performed, and for the performance of which the company was bound and obligated. Some of these contracts are even yet unexpired and to the performance of which the company is bound and obligated. The prices stipulated in such contracts for delivery of its products were based upon the price which the company was obligated under its contract with its employees to pay its employees for their services.

That the business of the company is not such as is likely to result in frequent or customary unemployment of all or any part of its personnel; nor is it subject to shutdown for weather, or from accidents in the plant or from machinery, or lack of raw material, or lack of market outlet, or other reasons. That the business of the company is entirely separate both in ownership and operation from the business of any other person or corporation in the State of Alabama or elsewhere. That the company has no connection of any kind with the employees of any other employers in the State of Alabama, and that any unemployment which might hereafter exist in any or all of such other businesses does not have any effect on the operation of the company's business.

That there is no plant or business in Alabama whose operations have been slowed down or employment curtailed as a result of the company's continued operation of its business or as a result of competition from the company. On the contrary, the company's continued operation of its business [fol. 147] has continuously and directly contributed to employment in other business in Alabama, and in other States.

III

The Company (assuming the constitutionality of the Alabama Unemployment Compensation Law) and its employees are subject to the exactions by way of "levies", contributions, taxes or pay roll "deductions" imposed by said Act. The company is by the terms of the Act liable for the payment of $17,991.36 for account of the exactions imposed against it directly with respect to employment from January 1, 1936, through August 31, 1936, and for the period of time from May 1, 1936, through August 31, 1936, is liable for the payment of $10,344.33 with respect to the statutory percentage of wages of its employees exacted from its employees but for the collection and payment of which the company is made liable, or a total of $28,335.69, the payment of which is sought to be collected by the respondents in this case. That the company will be required to pay an estimated amount of $5,024.45 per month with respect to wages during September, October, November and December, which amounts will become due on the 15th day of each succeeding month for the preceding month, or an estimated total for the year 1936 of $48,533.49. The amount of the tax which the company will be liable for at the percentages prescribed by the Act for 1937 and 1938 will be approximately $76,043.29 and $124,576.78, respectively, or a total of $249,153.56 for the three-year period.

IV

That substantially all of the employees of the company, or more than ninety per cent., have notified the management that they object to and protest against any deductions being withheld from their wages in accordance with the provisions of the Alabama Unemployment Compensation Act and have voluntarily contributed out of their wages to a fund

made up by the employees of this company, of the Dwight Manufacturing Company and of other companies in the Birmingham District for the purpose of contesting in the courts the validity of the Alabama Unemployment Compensation Act, and that such tests are now pending in the Circuit Court of Etowah County, Alabama, in suits having the name and style of P. O. Adams v. Dwight Manufacturing [fol. 148] Company and Hubert Killian v. Gulf States Steel Company; that affiant has been informed, believes such information, and on such information and belief deposes that in addition to the ninety per cent, of the employees of this company, a large number of other Alabama employers have contributed to the fund for the purpose of bringing and prosecuting the test suits above referred to; that, therefore, the company is faced with the possibility of a multiplicity of suits and/or claims and demands in reference to such withdrawals as it makes for the account of its employees in accordance with the terms of the Alabama Unemployment Compensation Law, and that should the law be declared invalid it will be faced with great losses incident to the repayment of such sums in the event it deducts the same from the wages of its employees in accordance with the terms of the Act, the interest thereon, and large incidental costs in reference thereto.

This 30th day of October, 1936.

A. R. Forsyth.

Subscribed and sworn to before me, this the 30th day of October, 1936.

E. S. Armistead, Notary Public. (Seal.)

[fol. 149] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF H. D. WARNER

Gulf States Paper Corporation

My name is H. D. Warner. I am Secretary and Treasurer of Gulf States Paper Corporation. The principal place of business of the corporation is in Tuscaloosa County, Alabama. This plant began the work of construction or operation in 1928, and since the completion of the plant has operated continuously, with the exception of a shut-down of

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several months in the latter part of 1935 due to a strike, and with temporary shut-downs of less than two weeks duration necessitated by repairs, high water, etc., in 1934 (June 17th to July 1st, and September 1st to September 20th). At other intervals operations have ceased for as much as a week, but not as long as two weeks.

As of August 31, 1929, we had 493 employees on plant roll, 28 employees on plant salary roll, and an estimated 20 on central office roll, or a total of 541 employees.

As of October 15, 1936, we had 744 employees on plant roll, 54 employees on plant salary roll, and 18 employees on central office roll, or a total of 816 employees, an increase of 275 employees over August 31, 1929.

This progressive increase in employment throughout the period of the depression and embracing the entire period of [fol. 150] the depression, is set out on the Exhibits hereto attached marked Exhibits A and B respectively.

Exhibit A is a table showing the number of salaried employees by months beginning January, 1930, and ending with September, 1936. This may be subject to correction to the extent of one or two employees, through the determination of averages for the month. This includes plant employees only.

From this table (Exhibit A) it will be seen that the salaried employees have increased steadily and progressively without a set-back of more than one or two from the previous high; from 50 during January, 1930, to 73 during September, 1936. The exits from this group for any and all causes have not been checked in detail, but the number is so small that they may be properly said to be negligible. The amounts paid employees on a salary basis are also set forth on Exhibit A.

A large majority of the employees of Gulf States Paper Corporation during 1936 were in the employment of the Company before September 14, 1935, in the regular employ of the company, under a continuing relationship and were not re-hired after that date. I do not mean that there were fixed contracts for definite terms but that the relationship of employer and employee had become established prior to the date stated.

Had the Alabama Unemployment Compensation Law been in effect beginning January 1, 1930, the amount of levies

under the Law against the Company and its salaried employees would have been as follows:

[fol. 151] Levy on Company at progressive rate increase Fixed by Act, Assuming a Beginning in 1930, Plus (a) 1% on Salaried Employees and (b) 1% on All Employees

Year	Rate	(a) Company and Salaried Employees	(b) Company and All Employees*
1930	1.90%	$2,179.76	$11,388.60
1931	2.80%	3,641.03	17,696.17
1932	3.70%	4,481.04	20,607.74
1933	3.70%	4,152.33	20,982.63
1934	3.70%	4,988.81	24,650.53
1935	4.00%	5,826.51	25,585.46
1936	4.00%	4,758.94	26,668.11

Based on the stabilized operations resulting from improvement in general conditions and absorption of the turnover resulting from the sudden increase in personnel resulting from NRA, in my opinion the amount of the levy upon plaintiff and its employees will continue indefinitely on a base pay roll of approximately $800,000 per annum, or, when the assumed average of 4% (3% plus 1% against employees) is reached, an annual levy of more than $30,000. [fol. 152] Exhibit B sets out a graph showing the average number of employees by months from January 1, 1931, through September, 1936. This includes only workers employed on an hourly wage basis, and excludes the salaried employees. The principal recession in the number of hourly workers from any previous high is the period following the extraordinary increase in the number of workers resulting from the adoption of the National Industrial Recovery Act in 1933. An increase of several hundred employees in July and August, 1933, resulted in a turnover beyond the Company's ordinary experience in the adaptation of the new personnel to the work.

There was also an observable reduction in the number of workers for a few months in the middle of 1935. As will be noted from the graph (with the exception of the decline from the peak following the extraordinary enlargement of personnel under NRA), the increase in personnel has been

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* Except central office: approximately $90,000 in 1935.

steady from the beginning of operation of the plant to a satisfactory normal line shown by the graph.

This graph shows the net average for the respective months, and does not show the total number of exits, voluntary withdrawals for personal reasons, and hires of new workers to take their places. It has not been found practicable by the Company within the time available and without material expense to trace all exits in order to ascertain [fol. 153] which would have been eligible for benefits under the Alabama Unemployment Compensation Law had it been effective during the period shown by the graph. Based upon a rough approximation, I am of the opinion that the distribution of benefits under the conditions of eligibility determined by the Act would have been a small fraction of the total levies against the Company and its employees as to the workers employed on an hourly basis, and would, as above stated, have been nominal and negligible as applied to plant workers employed on a salary basis, and would have amounted to nothing for salaried officers in the central office.

The sales of the product of Gulf States Paper Corporation are principally to purchasers in interstate commerce, not more than five (5%) per cent of its sales being to purchasers in Alabama.

There is no present prospect in the operation of the business of Gulf States Paper Corporation of stoppages of operations or of any substantial curtailment of employee personnel.

I have been requested to compile certain data from official reports and other sources indicated below:

(1) I have been requested to obtain affidavits from representstive industries or employers showing as accurate as possible cross-sections of the constructive application of the Act to their respective industries or businesses. I have accordingly obtained showings from those which were ob- [fol. 154] tainable in time for use at the first setting of the cause in which this statement is submitted, and submit them herewith:

Bituminous Coal Industry; all mines, consolidated.

Waterworks and electric utility: Alabama Water Service Co.

Wholesale merchants (hardware): Moore-Handley Hdwe. Co.

Life Insurance Companies: Protective Life Insurance Co.

Rubber Tire Industry: Goodyear Tire & Rubber Co. (Ala.).

They constitute, in my opinion, representative cross-sections of employers in Alabama included within the Act.

(2) I have been requested to compare this Company's experience of full time operations since its beginning with known examples of other plants or businesses.

(a) Highway Contractors.—The field workers in these organizations are employed generally from the floating labor pool in the vicinity of the job. During the past few years, when most highway construction has been with Federal aid, Federal relief agencies have required contractors to take workers assigned from the relief rolls in the several communities where the work is done. After the job is over the common labor is dropped permanently unless by chance another job is obtained. Contractors in this group are essentially nomadic and produce a high percentage of discharges.

(b) Building and Railway Contractors.—A somewhat similar condition obtains on all construction work. According to the affidavit of Mr. Joseph Halfpenny (Table A), approximately 10% of the labor in industries not exempt under the Alabama Act is employed in building and construction, compared with 39% in all manufacturing and not more than 2% or 3% in the manufacture of paper.

[fol. 155] (c) Manufacturing.—A wide variation in stoppages or exits prevails within the manufacturing group, from a plant of continuous operation, such as Gulf States Paper Corporation, to machines and foundry shops, furnaces, and like establishments in which there exists a heavy excess of competitive plant capacity over market and where labor is a large factor in the manufacturing process, employment varying almost directly with orders gained in a competitive market and wholly seasonal operations such as canneries, cotton seed oil mills and like operations which can obtain their raw material only seasonally and must work it up immediately and are closed down for the remainder of the year.

(d) Professional.—At the extreme end is the professional group, as to which quits or stoppages resulting in eligible unemployment are rare. Thus in the office of counsel for plaintiff in this proceeding we are authorized to state that there have been only two exits within the last six years, both being discharges for cause, to which eligible unemployment might (if the statutory conditions were fulfilled) have attached, all other exits having been under clearly non-eligible conditions.

(3) I have been requested to state briefly facts within my knowledge or available from specialists in the matter of the existence of actuarial data sufficient to determine the amount of tax or levy necessary to provide unemployment insurance on the basis predicated by the Alabama Act.

From a monograph upon the "Actuarial Factors in State Unemployment Compensation Plans" issued by the Federal Social Security Board, January, 1936, accompanying a suggested form for State Acts, the following excerpts are quoted. The portions not indented are statements of affiant. The portions quoted and indented are from the monograph where not otherwise indicated.

[fol. 156] Based on my study of the matter I am able to state that no adequate actuarial or experience data is available; that one of the essential purposes of a two year waiting period is to require reports and study those reports, with a view to possible exclusions, inclusions or statutory changes in the levies or in the conditions to or amounts of benefits, before the benefits become distributable under the Act.

"With the exception of the State of Wisconsin, no State has had actual experience with unemployment compensation in this country and the Wisconsin act has been in effect too short a time to yield any actuarial experience. In lieu of such experience, it is necessary to *estimate* the benefits which could be paid in each State in the future under the provisions of the suggested bill. The best method of arriving at such an estimate of possible future benefits would be to assume that an unemployment compensation plan, similar to that proposed in the suggested bill, had been in effect in each State for a period of years, and then to study the hypothetical past experience as a guide to the future. Unfortunately, the dearth of State

statistics on the unemployment problem makes such calculations for individual states very difficult in most instances. The only recourse when State statistics are wholly inadequate, is to estimate State behavior in terms of average figures for the United States.

"The suggested State unemployment compensation bill provides that two years elapse between the initiation of collections of contributions and the initial payment of the benefits. Employment records will of course have to be instituted for adminstration purposes when the plan goes into effect and these records will furnish some data which should be analyzed by each State before benefit payments are started. Such an analysis would probably indicate that corrections should be made in the estimates included herein."

(Federal Social Security Board, p. 1).

The monograph estimates (page 2) that for the United States 45.6% of the total workers gainfully employed would be included in the class of compensable labor forces not ex- [fol. 157] cluded by the Federal Act (without exclusion of carriers' employees subsequently exempted by the Alabama Amendment); for Alabama this percentage of the total gainfully employed in the nonexcluded groups is estimated at 30.4% (that is, 312,000 out of a total of 540,000 non-agricultural gainful workers, out of a total of all gainful workers of 1,026,000. This estimated percentage of gainful workers subject to the Act is below the national average due to the fact that a majority of the workers in Alabama gainfully employed are agricultural. This figure is not the Board's estimate of the number of workers actually to be covered but the total estimated compensable workers.

"A plan initiated now would, of course, exclude from immediate participation the vast number of unemployed, many of whom will eventually be covered through reemployment in employments that would be covered by the plan."

(Federal Social Security Board, p. 4).

The monograph sets out a rough approximation of the number of workers in each State who will be covered by the Federal excise tax, under a plan assumed to have been initiated in 1933. For Alabama it is estimated at 204,000, or

approximately 20% of the estimated total workers gainfully employed in the State in 1930.

"Utilizing the Bureau of Labor Statistics and the United States Censuses of Occupations and Unemployment of April, 1930, estimates have been made of the yearly average employment and unemployment within the compensable labor force by States for each year, 1930 through 1933, the results of which are shown in Table III. The dependability of these estimates is subject to question, at least for part of the period, because the data upon which they were based are inadequate and also because the [fol. 158] limited time available for study necessitated the use of unrefined statistical methods. Several checks with other information indicate, however, that these estimates are at least fair approximations of what probably existed. They may therefore be used as a guide in the absence of better data.

"More accurate indicators could probably be obtained from the statistical treatment of city surveys of unemployment where such are available, or from an examination of actual employment records within a State."

(Federal Social Security Board, p. 6).

"It should be recognized that the number unemployed is not the only factor conditioning the behavior of an unemployment compensation plan; the length of time that the unemployed have been idle is an important conditioning factor also, and one which will vary somewhat from State to State according to the industrial and economic characteristics of the area. If there is a continuous turn-over of labor so that large numbers of the labor force are without work for relatively short periods only, the drain on the unemployment compensation funds will be much greater than if the area includes large stranded populations subject to chronic unemployment. How much allowance should be made for such factors is almost impossible to estimate before State experience has been accumulated, and adjustments may become necessary as data are gathered under the operation of the plan."

(Federal Social Security Board, p. 9).

"State incomes under the plan will vary year by year according to fluctuations in the number of covered persons employed as well as in their wages. Both factors will have

an important bearing on the total amount raised. . . . Since low rates of pay tend to go hand-in-hand with high rates of unemployment, the years when incomes raised are smallest will also be the years when the number of unemployed eligible for benefits is greatest. And, unless reserves have been accumulated during less adverse times to meet depression emergencies, drastic measures will have to be taken to maintain a system on a solvent basis."
(Federal Social Security Board, p. 10).

(4) I have been requested to present certain excerpts from public statements or releases having a possible bearing upon the common understanding as to the relationship between the tax and appropriation provisions of the Federal Social Security Act relating to old age benefits and unemployment insurance:

[fol. 159] (a) Statement by the President in address broadcast from New York October 31, 1936 (text being taken from New York Times for November 1, 1936, page 36), relating to Federal Social Security Act:

"They tell the worker his wage will be reduced by a contribution to some vague form of old-age insurance. They carefully conceal from him the fact that for every dollar of premium he pays for that insurance, the employer pays another dollar. That omission is deceit.

"They carefully conceal from him the fact that under the Federal law he receives another insurance policy to help him if he loses his job and that the premium of that policy is paid 100 per cent by the employer and not one cent by the worker. They do not tell him that the insurance policy that is bought for him is far more favorable to him than any policy that any private insurance company could afford to issue. That omission is deceit.

"They imply to him that he pays all the cost of both forms of insurance. They carefully conceal from him the fact that for every dollar put up by him his employer puts up three dollars—three for one. And that omission is deceit.

"But they are guilty of more than deceit. When they imply that the reserves thus created against both these policies will be stolen by some future Congress—diverted to some wholly foreign purpose, they attack the integrity

end honor of American government itself. Those who suggest that are already aliens to the spirit of American democracy. Let them emigrate and try their lot under some foreign government in which they have more confidence."

(b) Text of page advertisement purporting to be written and paid for by The Democratic National Committee, Hotel Biltmore, New York City, omitting caption and table:

"You Can't Lose Because—You get more than you put in. No matter when you die, you and your family get all you paid in and more. If you live to 65 years, you get a pension three times bigger than you could get from any insurance company at the same rate.

[fol. 160] "The Social Security Act is the greatest insurance bargain ever offered.

"The Act provides aid to the blind, dependent mothers and crippled children. No tax is imposed on your pay envelope to pay for this aid.

"The Act provides insurance against unemployment. No Federal tax is imposed on your pay envelope for these pensions.

"It gives every worker in this country what private insurance companies call a *combination life and annuity policy.*

"The law makes the employer pay half the cost of this policy. The worker pays the other half.

"Thus you get back more than you pay in.

"If you die before 65, the insurance goes to your family.

"If you reach 65, you retire on the kind of an annuity only the well-to-do can afford to buy as private insurance, because the premiums to a private insurance Company for the same protection would be from *three* to *five times as much* as you pay to Uncle Sam.

"All of the above facts also apply in the case of a woman worker. Marriage does not affect a woman's right to the annuity for which she has paid. If she dies before reaching annuity age, the amount to which she is entitled goes to her estate.

"Existing private pensions are not affected in any way by the law.

"Your employer must match dollars with you to make your old age safe from want

This advertisement written and paid for by "The Democratic National Committee, Hotel Biltmore, New York City."

(Chicago Tribune, p. 4, Nov. 2, 1936)

[fol. 161] (c) Excerpt from address by Hon. Robert F. Wagner, U. S. Senator from New York, who introduced and reported the Federal Social Security Bill in the United States Senate, broadcast from New York, Monday night, November 2, 1936:

"The truth is that the Social Security Law is increasing tremendously the compensation that the worker receives for his services, and I shall tell you how. First of all, let us take the old age insurance system, under the Roosevelt Social Security Law it is designed to spare the worker of today from the humiliation of charity in his old age to assure him of dignified and substantial monthly insurance payments when he retires at the age of sixty-five. This insurance system is an absolutely sound system, backed by a fund in the U. S. Treasury. Into this fund the worker pays regular premiums, just as he would pay premiums if he bought an old age insurance policy from a private insurance company, but there is this tremendous difference: For every dollar that the worker pays into this old age insurance fund, his employer is required to add another dollar and both dollars belong to the worker.

"In addition, the whole cost of administering the system is paid for by the Government. As a result, each worker gets a vested and certain right in an old age annuity that is two and one-half times as great as he pays for. It is his absolutely and if he does before reaching the age of sixty-five, it will be paid to his family. The constant flow of money into the worker's insurance account to protect him when he grows old is his first pay increase under the Social Security Law.

"Secondly, the law provides for unemployment insurance that does not cost the worker a single penny. It is paid for entirely by the employer and the money that the employer pays into a fund to care for the worker

when he loses his job, that is the worker's second pay increase under the Social Security Law.

"Now to sum up, in order that I may be perfectly clear under both unemployment insurance and old age insurance, what does the worker contribute to his own fund?

"He pays a premium of one dollar for every one hundred dollars of wages he obtains. What does the em- [fol. 162] ployer contribute? The employer pays two dollars for every dollar the worker contributes. Who gets this money? Both the worker's dollar and the employer's two dollars are paid to the worker in the form of unemployment insurance and old age insurance. Is that all the worker gets? No, he gets the earnings on the old age pension fund.

"That, briefly, is why I say that the Social Security Law means a pay increase to the wage earners of America.

• • • • • • •

"They say that the funds for old age and unemployment insurance are not safe. They insinuate that the insurance fund will be stolen by the United States Government; that is a brazen falsehood. • • •

"This is the first time in American history that any responsible person has tried to besmirch the good faith of the American Government. It is a last desperate maneuver of the Republican opposition that the American people will indignantly repudiate."

[fol. 163] Administrative Interpretation of Power of State to Appropriate for Direct Relief. See Constitution, Sec. 93

No instance has been developed by checking the statutes for the past ten years of any direct appropriation by the State for the relief of destitution or unemployment or for private relief not connected with service of the State or arising out of some mistake, act or negligence involving the State.

A review of administrative acts since the onset of the current depression and cycle of unemployment discloses the following representative expressions or practice.

(5) I have been requested to excerpt the facts ascertainable from the files of the Governor's office set out below,

relating to the attitude of the State of Alabama to direct relief of destitution or hardship resulting from unemployment both during the depression and in general.

(a) In response to the provisions of Section 1 of Title I of the Federal Emergency Relief and Construction Act of 1932 (15 U. S. Code, Sec. 605-a), the Governor and the various relief agencies in the State concerned with destitution and unemployment presented sundry applications to the Reconstruction Finance Corporation. For convenience, condensed reference is made to this measure in the footnote. * These applications were presented through the [fol. 164] Governor. Accompanying the first application, dated August 15, 1932, which related to funds for direct relief and work relief for the City of Birmingham and Jefferson County, the Governor forwarded with the appliion an explanation in the form of the letter accompanied by a copy of the Proclamation of the Governor dated August 4, 1932, calling an extraordinary session of the Legis-

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* Section 1 of the Act related to the relief of destitution, and made available to RFC $300,000,000 "to be used in furnishing relief and work relief to needy and distressed people, and in relieving the hardship resulting from unemployment," to be available for payment to the Governors of the several states upon application by them in accordance with the Act, viz., upon a showing that the funds and resources of the State and its public subdivisions and private contributions were inadequate to meet its relief needs. Section 1 (d) provided as follows:

"d) Nothing in this section shall be construed to authorize the corporation to deny an otherwise acceptable application under this section because of constitutional or other legal inhibitions or because the State or Territory has borrowed to the full extent authorized by law. Whenever an application under this section is approved by the corporation in whole or in part, the amount approved shall be immediately paid to the governor of the State or Territory upon delivery by him to the corporation of a receipt therefor stating that the payment is accepted subject to the terms of this section."

Section (e) authorized the Governor to transfer the Federal aid money to any municipality or political subdivision.

lature to convene August 16, 1932. With reference to the subject of relief of destitution or unemployment the following clauses were inserted in the call:

"11. To provide that any county or municipality in the State may directly contribute of its public funds for the relief of unemployment, or for taking care of the unemployed and the destitute, in any manner that the municipality or county may see fit; to authorize any municipality or county to borrow money from the Reconstruction Finance Corporation, or from any other source, for the purpose of taking care of the destitute or for giving employment to the destitute or unemployed, and to provide for ratifying and making legal any payments that may have been made by counties or municipalities in relief work or in giving jobs or employment to the destitute or unemployed.

* * * * * * *

"17. To provide any legislation that may be necessary to permit the State to secure the full benefit of the emergency relief and construction act of 1932, passed by Con- [fol. 165] gress and approved by the President of the United States July 21, 1932; and to provide such legislation as may be necessary or proper to permit any municipality or any county of the State to secure the full benefit of said Act; and to provide such legislation as may be necessary or proper to authorize corporations to be formed and regulations to be provided for such corporations in order that such corporations may receive the benefit of the provisions of the said act; and to provide any legislation which may be necessary and proper for the said act to be taken advantage of in any way in the State of Alabama."

The call also included the following clause:

"14. To provide for the payment of Alabama's current debts; for construction and maintenance of public roads; for matching Federal road funds; for keeping our schools open and the salaries of the teachers paid promptly; for reducing salaries, wages and appropriations; for abolishing useless offices and departments; for consolidating departments and for balancing the budget of the State."

The answer to questionnaire set out in RFC Emergency Relief Bulletin No. 1, August 2, 1932, issued in the administration of the Federal Act above mentioned, returned with the Governor's application made on account of the City of Birmingham and Jefferson County, contain this statement:

"(2) (a) The City and County have made commitments in aid of relief work, and notwithstanding lack of authority or doubts as to their authority, to the extent of $105,000 in respect to expenditures which are past due. • • •

"(c) There is no relief to be expected under existing law from State government funds • • • and the local relief agencies have been advised by the Governor that it is not possible for the State to participate in direct relief, as a result of both the condition of the State treasury and of constitutional inhibitions. • • •

"(e) There are no other sources from which relief may be expected except such funds as may be made available under the Emergency Relief Act. • • •

"III. There has been no emergency action to provide relief funds taken by the State since January 1, 1931. The State is inhibited by constitutional limitations. • • • Relief in the industrial areas through action of [fol. 166] the Legislature or amendment of the Constitution will be seriously handicapped by the unwillingness of the people to remove constitutional limitations. In the majority of the counties of the State, although grave want, unemployment and even destitution exist, the people as a whole are not in danger of starvation, and it will be difficult if not impossible to obtain a ratification of constitutional amendments which would remove the limitations upon the industrial counties, where the destitution is ominous.

"Unless relief is immediately forthcoming, the relief agencies in the City of Birmingham and Jefferson County will be forced to suspend their relief work and no alternative can be expected other than wholesale starvation or disorder. The suspension of this service would mean that approximately 10,000 families, consisting of 50,000 people, or one-seventh of the population of the County of Jefferson, would be without food or any source from which it could be obtained.

"The foregoing is the existing situation as to organized relief agencies, which does not by any means reflect the total of destitution in Jefferson County. Numerous employers or former employers of labor are extending credit, not reflected in the above report, as are practically all citizens of the County in position to respond to direct appeals. The standing under-employed (below the margin of sustenance) are estimated at 40,000 heads of families, reflecting an ominously large proportion of the total population of the County."

Proposed Amendment to Constitution

By Joint Resolution (No. 11, Acts Ex. Sess. 1932, p. 12), passed by the House of Representatives August 30, 1932, and by the Senate September 6, 1932, there was submitted to the electors a proposed amendment to the Constitution to authorize counties and municipalities to borrow money from the RFC under the Emergency Relief and Construction Act of 1932, even if in excess of their Constitutional debt limits, and use of funds in furnishing relief and work relief to needy and distressed people, and in relieving the [fol. 167] hardships resulting from unemployment, etc. The proposed amendment also included the following clause:

"Each municipality and each county in the State is authorized to appropriate funds for furnishing relief and work relief to needy and distressed people and to relieve the hardships resulting from unemployment, and any appropriation that may have heretofore been made by any municipality or county is hereby declared to be legal."

This submission followed very general expression of doubt by county authorities and County Attorneys as to the validity of the use of County funds for direct relief. This amendment was submitted to the electors at the election held November 8, 1932, and was rejected by a vote of — for and — against the proposed amendment.

Following the rejection of this amendment the Legislature promptly enacted by Act No. 289, approved November 14, 1932 (Acts 1932, p. 283) a law to enable County

authorities to make provision for the care of the poor and needy by statute reading as follows, effective immediately:

> "SECTION 1. That the Court of County Commissioners, the County Board of Revenue, or other governing body in any County shall have the power and authority, with the approval of the State Child Welfare Department, to make other or further provision for the care of the poor and needy of each or either of the counties. The disbursement of any funds to be made through such agencies and in such manner as may be approved by the State Child Welfare Department."

Counties had previously been authorized by Act No. 339, approved July 2, 1931 (Acts, 1931, p. 397), to make appropriations of funds "to be expended by the County Board of Child Welfare for the relief of children under eighteen (18) years of age."

[fol. 168] [NOTE.—An Act for the aid of crippled children by authorizing the State Board of Education to comply with the provisions of the Federal Social Security Act, and to extend the service now maintained by the State Board of Education for locating crippled children, was adopted in 1935 (Acts 1935, p. 870).]

The statutory provisions in Alabama in addition to the foregoing in relation to the relief of destitution include the following grants of authority to counties. There has been discovered no statute purporting to authorize any state office, board or department to disburse state funds for direct relief of destitution.

(a) With the additional provisions herein mentioned, Section 6755 (13) of the Code, which has been in effect for many years in Alabama, makes provision for the only authority granted to the counties in relation to the relief of destitution or unemployment (that is, paupers or indigent persons), not in excess of $6.00 per month, other than through the general pauper laws contained in Chapter 50 of the Code (Sec. 2787 et seq.). See Michie's Code, Section 2806, note.

Prior to the Code of 1907, Commissioners' Courts in Alabama had been vested with a discretion in the application "of the well recognized power for the relief of paupers

within their jurisdiction"; but by sections new to the subject in the Code of 1907 (Section 1607) this power was limited to temporary provision for one month "and then [fol. 169] only in cases of emergency." The intent of the statute, as asserted in State v. Mims, 174 Ala. 233, at p. 235, from which the above quoted phrases are excerpted, was further confirmed by the provision of Section 1603, whereby the Commissioners' Courts are commanded "to prevent the poor from strolling from one district to another." These sections of the Code of 1907 (1603 and 1607) are found as sections 2792 and 2796 of the present Code.

The Extra Session of the Legislature in 1933 made no further provision relating to the matter of direct relief of destitution or unemployment with respect to State, counties or municipalities.

Nor is any direct legislation upon the matter found in the Acts of the Legislature for the sessions held in 1935 and 1936. By Section 18 of Act No. 19, approved January 31, 1935 (Acts 1935, at p. 35), relating to the imposition of an additional excise tax upon the storing or withdrawal of motor fuels, etc., it is provided that:

> "That the proceeds from one cent of said tax herein levied may be used by the Governor of the State of Alabama at any time within twelve months from the approval of this Act for the purpose of matching any United States Government funds on any fair and reasonable basis."

No one has challenged in the Courts the validity of the clause or the interpretation of Section 18 by the Governor or the delegation of power inherent in the clause, if it be construed as authorizing "matching" except in relation to federal aid of highway construction.

[fol. 170] For many years there has been known in public administration in Alabama the practice of matching federal aid funds in relation to the construction of highways, since the adoption of the Federal Aid Law of July 11, 1916, to which the State assented by the Alabama Highway Code adopted in 1927 (Acts 1927, p. 248, at p. 360; Michie's Code, 1927, Sec. 1397 (40)). The process of "Matching Federal Aid" in relation to the construction and maintenance of public roads in the State was included in the call for extraordinary session made by the Governor August 4, 1932, as quoted in Item 8 of the call, supra.

Under this Act it is understood that the Governor of Alabama during the twelve months period of his limited authority under the Act of January 31, 1935, above quoted, has made use of a portion of this fund to provide highway work intended primarily for relief, and that this application of the funds was accepted by the Federal authorities in the distribution of Federal relief monies as a contribution to depression relief by the State.

Inspection has disclosed no additional legislation which might have any bearing upon appropriation for poor relief or for direct aid for the relief of destitution or unemployment, other than an Act relating to hospital accommodations and services for the poor in counties having a population of not less than 75,000 nor more than 100,000 (Acts, S. S. 1932, p. 49).

H. D. Warner.

[fol. 171] *Duly sworn to by H. D. Warner. Jurat omitted in printing.*

[fol. 172] EXHIBIT "A" TO AFFIDAVIT

(1) Date of Roll	(2) Salaried Employees (Plant)*	(3) Salaries
1930		
January	50	$9,758.19
February	49	8,875.60
March	49	9,715.26
April	49	8,941.27
May	55	9,640.06
June	55	9,435.39
July	57	9,868.92
August	56	9,791.21
September	54	9,618.48
October	55	9,666.00
November	55	9,634.17
December	55	9,779.58
		114,724.13

* Does not include central office: approximately $90,000 for 1935.

EXHIBIT "A" TO AFFIDAVIT—Continued

(1) Date of Roll	(2) Salaried Employees (Plant)*	(3) Salaries
1931		
January	54	10,495.29
February	58	10,686.12
March	57	11,533.27
April	60	11,281.83
May	60	11,393.08
June	59	10,844.80
July	58	10,667.71
August	62	11,437.28
September	60	10,713.20
October	57	10,473.94
November	57	10,152.08
December	57	10,358.33
		130,036.93
1932		
January	57	11,575.30
February	57	10,470.53
March	57	11,014.17
April	56	10,724.24
May	55	11,035.58
June	54	10,180.63
July	57	9,565.01
August	58	9,791.20
September	57	9,329.40
October	58	9,217.82
November	57	8,945.21
December	59	9,260.14
		121,109.23
[fol. 173] 1933		
January	59	9,867.13
February	59	9,282.36
March	59	8,801.71
April	58	9,126.79
May	58	9,281.30
June	59	8,742.42
July	60	8,911.42

* Does not include central office: approximately $90,000 for 1935.

EXHIBIT "A" TO AFFIDAVIT—Continued

(1) Date of Roll	(2) Salaried Employees (Plant)*	(3) Salaries
August	59	9,242.40
September	62	9,659.60
October	64	9,495.42
November	63	9,770.78
December	65	10,043.67
		112,225.00
1934		
January	67	10,623.79
February	66	10,351.83
March	66	10,883.59
April	67	11,461.61
May	66	11,724.88
June	66	11,211.33
July	66	11,278.08
August	66	11,430.97
September	67	11,675.14
October	70	11,307.55
November	69	11,380.07
December	71	11,503.88
		134,832.72
1935		
January	69	$11,942.93
February	69	11,654.64
March	69	11,580.12
April	71	13,307.99
May	69	12,076.03
June	70	11,844.64
July	74	12,143.71
August	74	13,497.31
September	74	12,629.70
October	72	11,593.13
November	72	11,685.62
December	71	11,707.01
		145,662.83

* Does not include central office: approximately $90,000 for 1935.

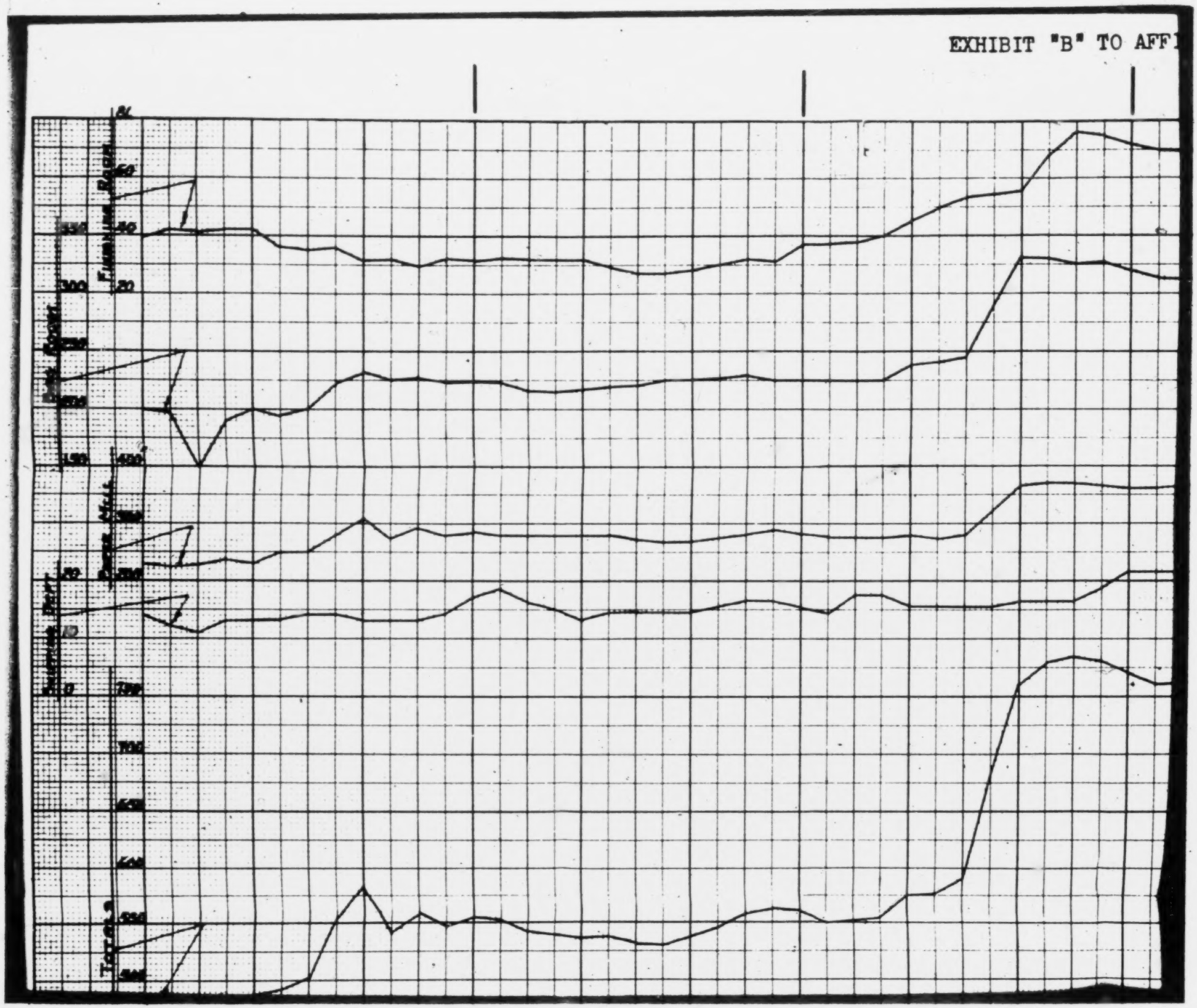
EXHIBIT "A" TO AFFIDAVIT—Continued

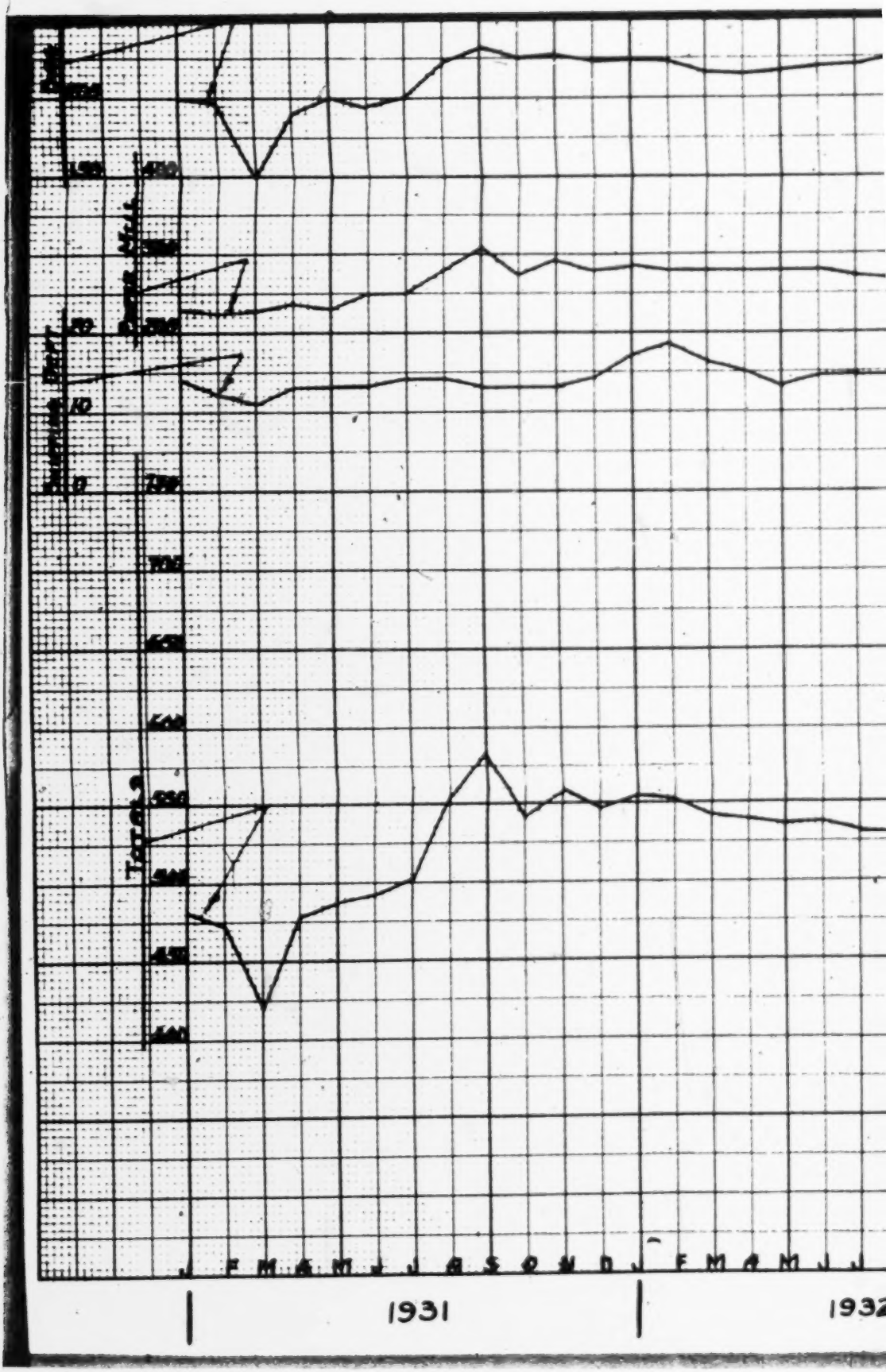
(1) Date of Roll	(2) Salaried Employees (Plant)*	(3) Salaries
[fol. 174] 1936		
January	72	12,119.20
February	72	12,551.94
March	72	11,923.20
April	73	12,317.77
May	74	14,062.58
June	72	11,902.81
July	71	11,987.15
August	71	13,368.14
September	73	12,951.31
October (through 15th)	71	5,789.44
		$118,973.54

* Does not include central office: approximately $90,000 for 1935.

(Here follows one photo, side folio 175.)

EXHIBIT "B" TO AFF




J F M A M J J A S O N D J F M A M J J
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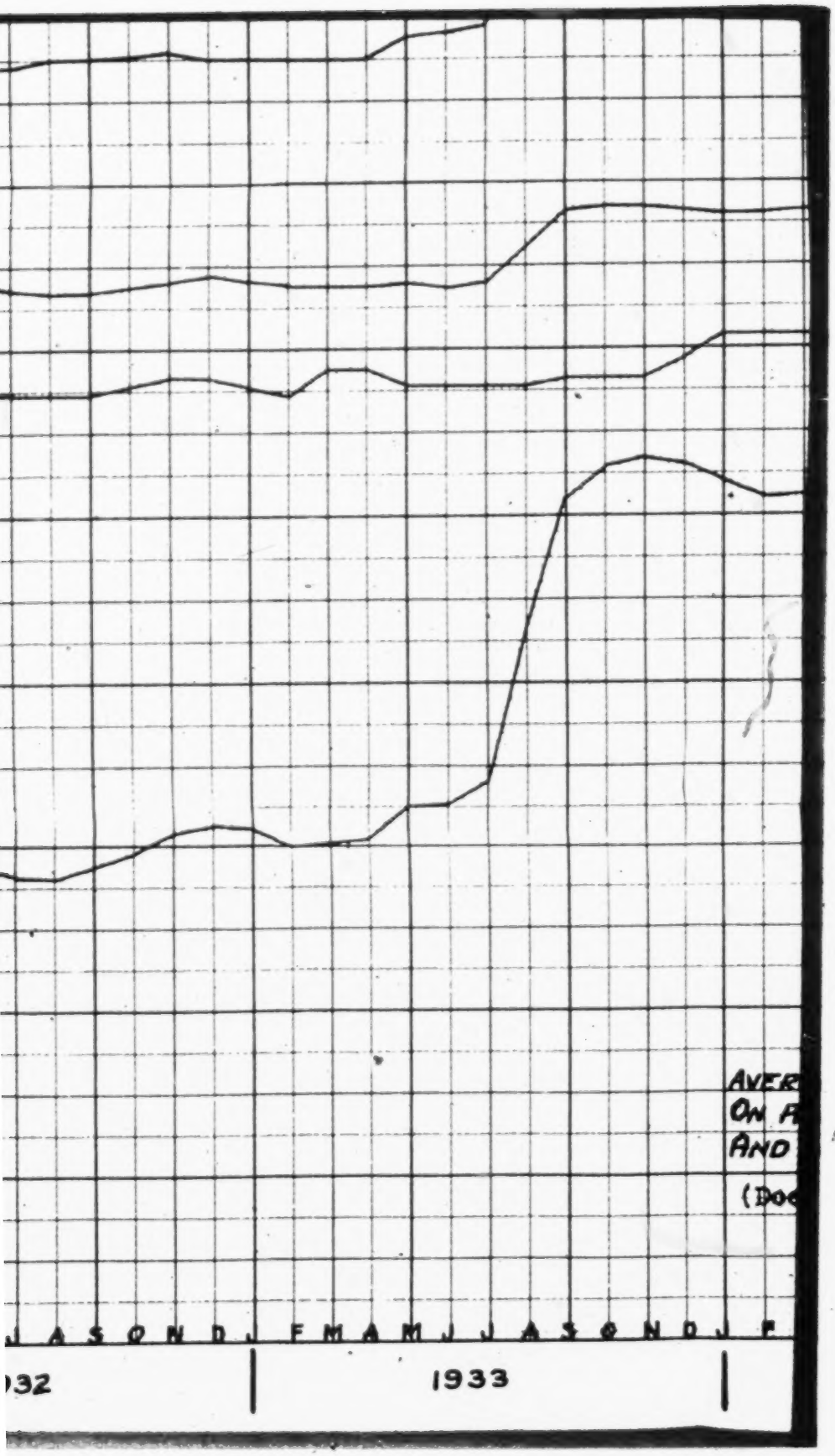
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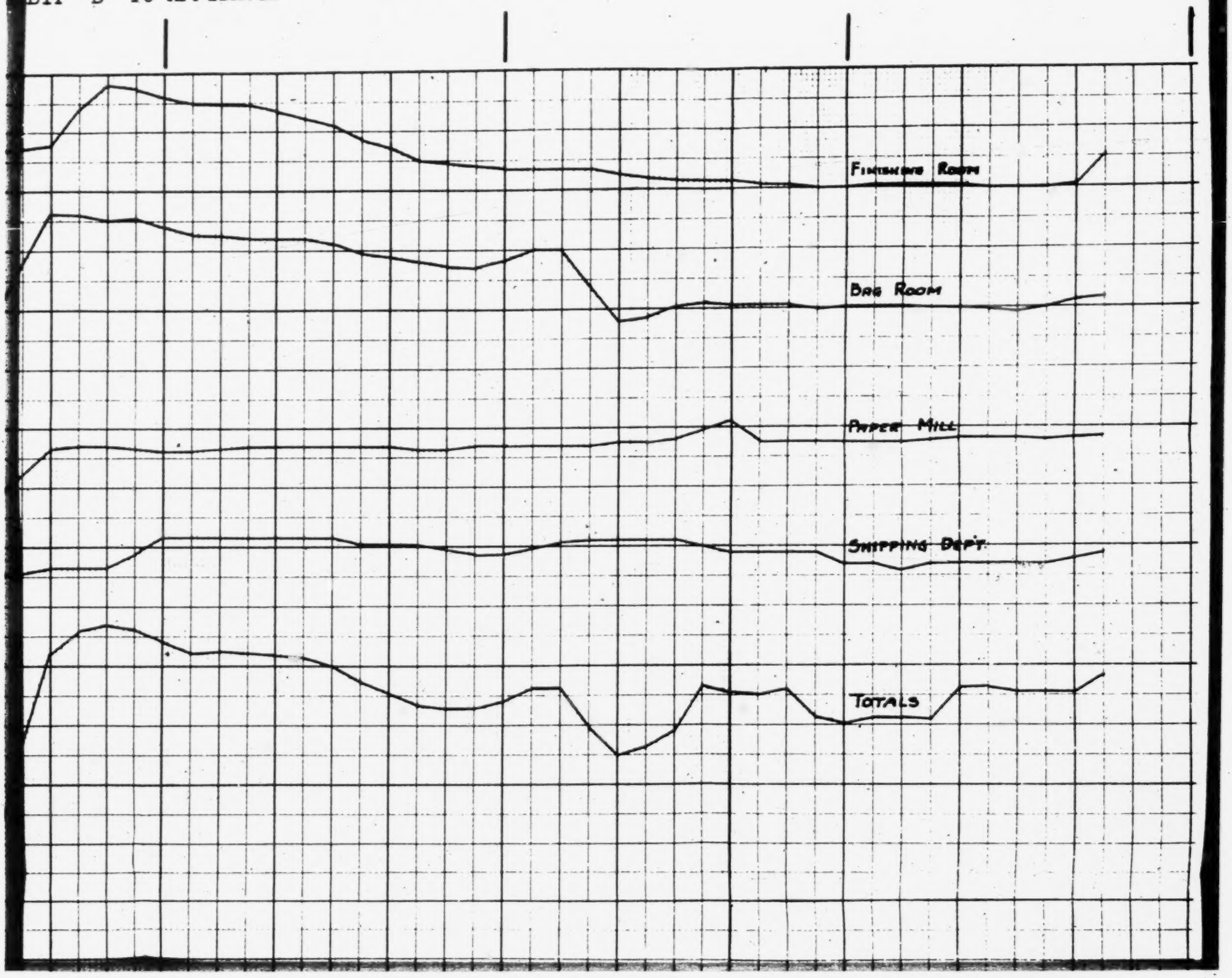
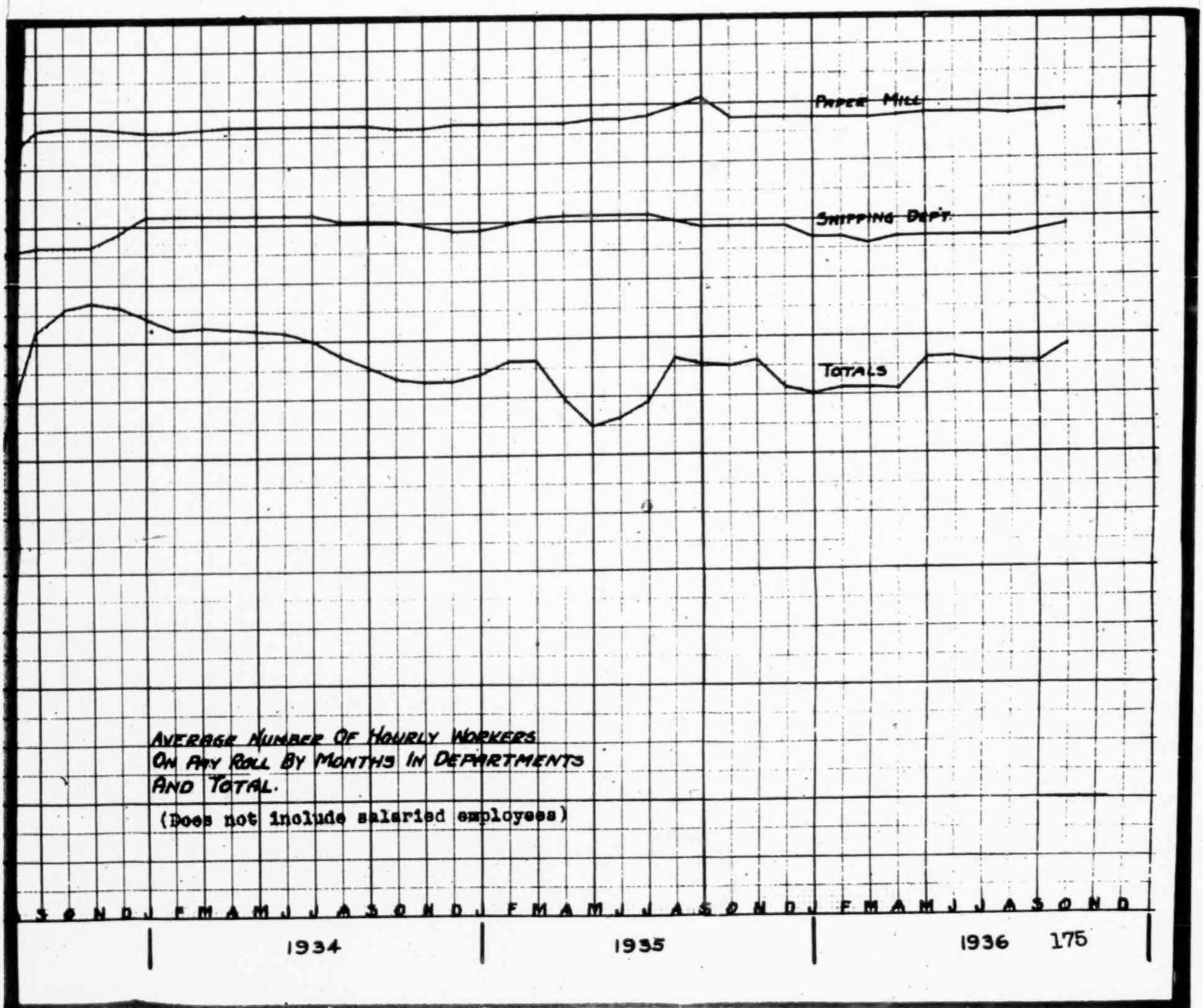
BIT "B" TO AFFIDAVIT





AVERAGE NUMBER OF HOURLY WORKERS
ON PAY ROLL BY MONTHS IN DEPARTMENTS
AND TOTAL.

(Does not include salaried employees)

[fol. 176] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF HERBERT S. CRAIGMILE

Goodyear Tire and Rubber Company

My name is Herbert S. Craigmile. I am Personnel Manager of Goodyear Tire and Rubber Company. I have made investigation of its books and records as to employment, payrolls, and other data referred to herein in connection with the application of the Alabama Unemployment Compensation Act.

This Company is engaged in the business of manufacturing automobile tires at its plant at Gadsden, Alabama. At the present time it is employing 1560 workers. The following is a schedule of employment at the plant, showing average number of employees during each month since the plant began operation in August, 1929:

Employees per Month

	1929	1930	1931	1932	1933	1934	1935	1936
Jan.	...	1,087	960	829	686	771	928	849
Feb.	...	1,076	980	821	650	818	966	857
Mar.	...	998	1,029	815	638	836	971	941
Apr.	...	1,022	1,042	751	641	884	957	1,030
May	...	1,014	1,043	748	675	891	983	1,163
June	...	996	1,035	748	787	888	1,000	1,298
July	...	942	1,029	743	895	901	1,006	1,452
Aug.	1,195	911	1,021	736	872	846	986	1,549
Sept.	1,089	887	970	762	758	824	967	1,560
Oct.	1,035	849	924	759	720	817	883	...
Nov.	1,000	854	853	742	715	819	846	...
Dec.	957	863	779	734	716	872	840	...

Aside from the general drop in employment in the years 1932, 1933 and 1934, due to the general depression, employ-
[fol. 177] ment at the plant varies seasonally to a moderate extent, due to seasonal fluctuation in demand for the product.

An approximate schedule of the contributions to the Unemployment Insurance Compensation Fund which would have been made by the company and its employees at the schedules provided by the Act had the Act been applicable during the period shown is attached hereto marked Schedule A. This schedule shows that total contributions by the Company during a nine year period would have amounted to $246,000.00, and its employees would have paid during the same period $108,700.00, creating a total fund of $354,700.00.

The total number of employees who left the service of the company for any reason, from January, 1930 through September, 1936, are shown by the following table:

	Voluntary Quits	Total Exits
1930	452	835
1931	176	483
1932	43	192
1933	49	303
1934	53	160
1935	74	270
1936	135	218

[fol. 178] Analysis has been made, by actual inquiry and investigation in approximately 131 individual cases, selected at random, of the cause and purpose of withdrawal from the company's employment, for the purpose of estimating the proportionate number and percentage of employees who would have been eligible for benefits, had the act been in operation since 1930.

While in my opinion there can be no exact computation of the amount of benefits which would have been payable, because of necessarily variant factors determining eligibility, involving every possibility of the employees' previous earnings and employment and subsequent disposition of his time and energy, the attached tables, marked Schedule B, Schedule C, Schedule D, are constructive applications of the benefit provisions of the Act to former employees of this company which present an approximate picture of what would have happened, based on the various assumptions stated.

In each calculation doubts have been resolved in favor of greater or maximum benefits.

The opinion as to the ratio of eligibles is based upon the study of the representative group of 31 actual exits. The further assumptions stated are explained in the tables.

A large percentage of the labor at this plant came from the surrounding rural territory. Many of the employees continue to reside upon farms, which continue to re-absorb a substantial proportion of the exits.

[fol. 179] It is, moreover, to be noted that the period reflected in the attached statements covers the period of the greatest and most prolonged depression of modern times, and can not be regarded as a normal test for unemploy-

ment to be expected for the period beginning October 1, 1938.

This Company's policies as to work and employment and their effect upon the life and welfare of the community have the approval of the city government and civic organizations in the area. Although necessarily dependent upon the current market for the product and therefore subject to some ebb and flow incident to the operation of the competitive American system of industry, the curtailment of employee personnel to adjust output to demand is not excessive nor too great for the area to absorb.

In the opinion of affiant, based on his knowledge of the facts, the by-products or indirect results of operation of the plant in the area have, even during the depth of the depression, more than supported employment in excess of the number of exits from the plant at any time seeking employment.

In the opinion of affiant, based on market studies and the business forecast of the management, the total and range of exits at this plant to be anticipated in the future will be materially less than has been the record during the depression period.

Herbert S. Craigmile.

Sworn to and subscribed before me, this 28 day of October, 1936. Joseph H. Johnson, Notary Public.

[fol. 180] SCHEDULE "A" TO AFFIDAVIT

Estimated Contributions

(Assuming Act in Effect Starting January 1930)

Goodyear—Gadsden

		Total Payroll	Rate	Total Contributions to Fund
	1930	$1,047,363	1.9%	19,900
	1931	1,030,559	2.8	28,800
	1932	698,730	3.7	25,800
	1933	674,979	3.7	25,000
	1934	911,050	3.7	33,700
	1935	1,019,879	3.7	37,700
Approx.	1936	1,895,000	4.0	75,800
Est.	1937	1,800,000	3.0	54,000
Est.	1938	1,800,000	3.0	54,000
	Total 1930–1938			$354,700

Schedule "A" to Affidavit—Continued

		Employer Contributions	Employee Contributions
	1930	9,400	10,500
	1931	18,500	10,300
	1932	18,800	7,000
	1933	18,300	6,700
	1934	24,600	9,100
	1935	27,500	10,200
Approx.	1936	56,900	18,900
Est.	1937	36,000	18,000
Est.	1938	36,000	18,000
	Total	$246,000	$108,700

[fol. 181] SCHEDULE "B" TO AFFIDAVIT

Total Exits and Those Estimated to be Eligible for Benefits

(Goodyear—Gadsden)

		(1) Total Exits	(2) Excluding for known disqualifying conditions (100%–40%)	(3) Est. Eligible Exits (30%)
	1930	835	500	250
	1931	483	290	145
	1932	192	115	58
	1933	303	182	91
	1934	160	96	48
	1935	270	162	81
Approx.	1936	320	193	97
Est.	1937	375	225	113
Est.	1938	275	225	113

Col. (1) Exits for all causes.

Col. (2) The analysis of 131 exits indicates on the face of the known facts that not less than 40% of the total exits are under conditions subsequent which make them ineligible for current benefits under the Act. These known facts include no further investigation as to re-employment, part time re-employment, return to class of farm worker, study as to duration of previous employment. Applying an estimated factor for these unknown conditions, it is estimated that the number shown in Col. (2) would be reduced to 30%, as shown in Col. (3).

Col. (3) Estimated exits remaining eligible after deducting 40% from total exits for known percentage disqualifications disclosed by study of 131 exits, it is estimated that, on the average, a further 30% of the total would be ineligible because of re-employment, transfer to ineligible employment, part time employment, removal from the State, failure to register for re-employment or to take employment offered, etc.; thus leaving a net total of 30% of total exits eligible for benefits.

[fol. 182] SCHEDULE "C" TO AFFIDAVIT

Weekly Earnings and Estimated Weekly Benefits

(Goodyear—Gadsden)

		Monthly Earnings	*Weekly Earnings	Maximum Weekly Benefits (50%)
	1930	$91.20	$21.05	$10.52
	1931	88.30	20.40	10.20
	1932	75.80	17.50	8.75
	1933	77.00	17.80	8.90
	1934	89.60	20.70	10.35
	1935	90.20	20.80	10.40
Approx.	1936	123.00	28.40	14.20
Est.	1937	120.00	27.70	13.85
Est.	1938	120.00	27.70	13.85

* Monthly earnings divided by 4-1/3 weeks.

fol. 183] SCHEDULE "D" TO AFFIDAVIT

Estimated Unemployment Benefits to Former Employees Based on Various Assumptions

(Goodyear—Gadsden)

		(1) Maximum benefits possible applied to total exits	(2) Benefits on total exits for 17 weeks	(3) Benefits based on 60% of total exits. See Sch. B, Col. (2)	(4) Est. Actual Benefits based on 30% of total exits. See Sch. B, Col. (3)
	1932	$32,500	$29,400	$17,600	$8,800
	1933	58,820	46,350	27,800	13,900
	1934	38,420	27,200	16,300	8,150
	1935	70,800	48,200	28,900	14,450
Approx.	1936	112,000	76,100	45,700	22,850
Est.	1937	131,200	89,300	53,600	26,800
Est.	1938	131,200	89,300	53,600	26,800
Excess (or deficiency) of fund—$354,700 (See Sch. A):		574,940	405,850	243,500	121,750
		(def.) $220,240	(def.) 51,150	(excess) 111,200	(excess) 232,950

Col. (1) Based on total exits, at 50% of average weekly wage and assuming all the unemployed were eligible to participate in maximum benefits on the basis that the Act was effective January 1, 1930, and that the unemployed exits all started their employment at this time.

Col. (2) Based on total exits as in Col. (1) but assuming the unemployment period averages 17 weeks.

Col. (4) It is estimated that the per cent of total eligibles to total exits would not reach 30% were it not for the fact that the necessary effect of the Act is to put a premium upon abstention from employment during the running of the benefit.

[fol. 184] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF RICHARD H. CHILDERS

Moore-Handley Hardware Company

My name is Richard H. Childers. I am Auditor of Moore-Handley Hardware Company, an Alabama corporation which has conducted a wholesale hardware business located at Birmingham for over fifty years. The Company has been in continuous operation of its business without cessation during this period. During 1935 its employees ranged from a low of 364 in January, 1935, to 388 on December 31, 1935.

I have examined and am familiar with the Company's records and statistics relating to its payrolls, employment, exits from employment, and re-employment, with particular reference to the years 1933, 1934 and 1935; also its payrolls for the two years prior to 1933; and also the records neces-

sary to the exact determination of the original date of continuous employment of those who left the service of the company during 1933, 1934 and 1935. This study was made for the purpose of making a constructive application of the Alabama Unemployment Compensation Act to the company based on the years 1933, 1934 and 1935.

The problem of unemployment has borne nominally upon this Company because of the fact of its continuous opera-
[fol. 185] tions and the adoption of a policy during periods of recession in gross sales to continue as far as practicable its regular employee personnel. Thus during the most severe test to which the Company in its entire history has been subjected, namely the low spot in the depression beginning in 1929, the recession in the number of employees did not follow the recession in the Company's sales. This is illustrated by the following comparison:

	1927	1932	Decrease
Sales	$7,720,480.24	$2,931,897.27	62%
Number of Employees (Dec.)	380	290	24%

In order to apply constructively the Act to the three actual years selected for analysis (1933-34-35), I have checked the records as to each of the regular employees who left the service for any cause during the years stated, numbering 29 for 1933, 24 for 1934, and 45 for 1935, and have ascertained in each case the circumstances under which the employee left the service. By ascertainment of the actual figures in each case, it has been practicable to determine with a reasonable degree of accuracy the extent to which these former employees would have become eligible under the definition of the Act to receive standard or extended benefits under its terms. In each case where doubt existed as to the amount of the benefit which would have been payable, we have estimated the benefit at the maximum permitted under the Act. In order to determine whether or
[fol. 186] not the employees leaving the service would be entitled to extended benefits, the duration of their service with the company was checked and extended compensation was allowed on the maximum basis ($15 per week) for the extended weeks of service contemplated by the Act.

The result of this analysis is set out on the following table:

Total weeks of benefit payable for unemployment starting in		Total benefits
1933	255	3,825.00
1934	159	2,385.00
1935	209	3,135.00

If it be assumed that approaching 1933 the Act had been in effect for five years, and that the average rate of contributions applicable to industry as a whole were then applicable (3% against the employer and 1% against the employee), the following would show the accumulation in the fund and the excess of contributions over benefits payable to the former employees of this Company, based upon the assumption of eligible unemployment in all cases where not [fol. 187] specifically excluded by the analysis of our records:

Year	Net payroll on which contributions payable	Total contributions at 4%	Excess over benefits
1933	$466,559.10	$18,662.36	$14,837.36
1934	568,362.23	22,734.49	20,349.49
1935	621,216.03	24,848.64	21,713.64
		$66,245.49	$56,900.49

I have considered the matter of the cost of the necessary clerical service and records to keep and compile the statistics and make the reports which would be required of the company under the administration of the Act. In my opinion it would be not less than $2,000 annually. The keeping of the necessary records and the making of the necessary reports contemplated by the rules promulgated by the Commission will in my opinion require the full time services of an accountant or statistician of good ability, and in my opinion the estimate of $2,000 is conservative as applied to businesses employing from 200 to 500 employees.

The matter of the bearing of the Unemployment Compensation Act upon the policy of this Company has been discussed by the management, and I am able to state that on account of the duplication of cost which would be involved in the compulsory contribution to the compensation fund, with no tangible or appreciable benefit to the com- [fol. 188] pany, it would be necessary for the company to curtail its payrolls in periods of diminished activity rather than stand the expense of making sacrifices to continue the employment in accordance with the policy which has been heretofore established.

This Company's ad valorem, income and franchise and merchants license taxes, constituting all of the taxes paid by the company for the support of the State, County and City governments, amounted to an aggregate of $143,831.81 for the three years, and the company's tax for the support of the federal government (income and capital stock taxes) over the same period, 1933-1935, amounted to an aggregate of $56,653.80. Had the full average levy made against employers subject to the Act in the aggregate (3% during and after 1941) applied to the company's payrolls during 1933, 1934 and 1935, the amount of the aggregate contribution for the three years would have been $44,164.12, which added to the employee levy of 1% would have resulted in a total impost against this unit of industry for one single social objective amounting to 46% of its total direct contribution for all functions and objectives of State, County and City governments and 117% of its total direct contribution for all functions and objectives of the federal government.

Richard H. Childers.

Sworn to and subscribed before me this 17 day of November, 1936.

Minnie Daniel, Notary Public, Jefferson County, Alabama. (Seal.)

[fol. 189] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF ALEX C. WELLMAN

Protective Life Insurance Company

My name is Alex C. Wellman. I am Vice President of Protective Life Insurance Company. The home office of the Company is in Birmingham, Alabama.

I am an actuary, and am accustomed to the compilation and analysis of statistics and statistical data. I have been engaged in performing the functions of actuary and statistician for eleven years. I have made investigation of the books and records as to employment, payrolls and other data referred to herein in connection with the application of the Alabama Unemployment Compensation Act.

Assuming that the benefits to be paid under the Act to employees subject to the Act who may become eligible under its terms are deferred until approximately October

1, 1938, I am of the opinion, based on my information of the available statistical data and my analysis of the conditions subject to which the benefits are payable, that it is not practicable to arrive at even an approximately accurate conclusion as to the amount of withdrawals which will be made by eligibles under the Act.

My reason for the conclusion stated is, first of all, that the amount of unemployment cannot be projected; that [fol. 190] basic data is lacking for the study of unemployment, its origin and duration as applied to individual employees, and that there is such a multiplicity of variables involved in the individual equation of unemployment, that no estimate can be projected two years into the future.

Even if unemployment data were available for any given period it would not be adequate for actuarial calculations to apply to future periods. The impact of unemployment is more acute on the down curve of a general depression. General depressions are cyclical and unpredictable both as to their severity and duration. Apart from the pool of floating unemployed characteristic of industry in Alabama, in the case of most of the employers reduction of personnel and consequent unemployment is usually small or negligible, succeeded by unpredictable periods of general unemployment. Funds that might be necessary and sufficient for what might be termed the normal periods of unemployment or referable to the floating pool of unemployed would be wholly inadequate on any basis of limitation for a general and continued period of depression, or to meet the adjustment of sharp changes in employment policy such as might result from the adoption of changed hours of service and radical increases in personnel such as resulted from the inauguration of the President's agreement and NRA require- [fol. 191] ments. For these reasons, fully applicable to employers and employees in Alabama, it can be asserted that there is no method of estimating the amount of reserves that would be necessary to be built up to meet adequately a general period of unemployment.

Even if basic statistical data were available as to withdrawals or average withdrawals in particular plants or in the aggregate in the State, it would not be practicable to set up or predict an average prospective unemployment period applied to the number for the time being unem-

ployed, or even to guess remotely what steps individuals would take to obtain employment or how individuals would employ their time.

During the general depression a large number of unemployed have had recourse to their original homes or vicinities on farms. This tendency to make use of the farm as a cushion to absorb unemployment is illustrated by the increase in the number of farms in Alabama from 257,395, as reported by the United States Census for 1930, to 273,455 in the year 1935. No one can foresee what effect the Alabama Unemployment Compensation Act would have upon this tendency to fall back upon the farms in periods of unemployment.

Moreover, each condition prescribed by the Alabama Unemployment Compensation Act for the receipt of benefits under the Act has elements that are unascertainable and [fol. 192] unpredictable, such, for instance, as the following:

(1) The full time weekly wage of the person becoming unemployed. The "full time weekly wage", as defined by the Act, does not correspond with the wages actually paid the particular employee upon which his and the employer's taxes were based. The Act computes the full time wage on a constructive basis by expanding his average unit wage to full time employment.

(2) It cannot be foreseen how many employed persons, prior to their unemployment, will have been engaged for the necessary number of weeks to qualify for initial or extended benefits.

(3) It cannot be foreseen *whether* how many employed persons would supplement their unemployment by partial employment.

(4) It cannot be foreseen whether such employed persons, or how many of them, would become farm employees or otherwise become ineligible for benefits under the fund. [fol. 193] It is practicable to apply the Act constructively to some individual plants or businesses, predicated, however, upon stated assumptions, and upon past record of employment and payrolls. Thus, in the case of the Protective Life Insurance Company, practically no unemployment has resulted which would have made former employees of

the Company eligible for the receipt of benefits under the Act had it been in effect during the period 1930 to date. This will be illustrated by the following table showing the number of employees by months for the six years ending December 31, 1935.

Number of Employees by Months for Six Years Ending December 31, 1935

	1930	1931	1932	1933	1934	1935
January	68	76	81	88	96	91
February	67	79	83	90	93	90
March	69	85	85	96	97	91
April	67	83	84	97	96	93
May	64	85	85	95	96	95
June	67	85	82	93	94	93
July	64	85	82	94	94	96
August	68	86	84	97	98	89
[fol. 194]						
September	75	90	84	96	97	91
October	74	85	85	95	95	93
November	77	81	85	97	94	93
December	76	81	84	95	93	93

While this table shows the net number and does not indicate the number which at any given time left the employment, the statement may be made that the number leaving the employment over the period stated, except as a result of death or under circumstances which would not have made them eligible for benefits under the fund, is nominal if in fact any single employee would have become eligible during the entire period.

An analysis of these figures and of the facts under which this Company's personnel changes from time to time makes it clear that the application of the Alabama Unemployment Compensation Act would result in no tangible or appreciable distributions to employees or former employees of this Company, and such benefit as the Company might experience in return for its contributions to the fund would be such only as would be experienced by the public as a [fol. 195] whole.

Alex C. Wellman.

Sworn to and subscribed before me, this 17th day of October, 1936.

(Seal.) L. J. Caran, Notary Public.

[fol. 196] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF HERBERT S. SALMON

Bituminous Coal Industry

My name is Herbert S. Salmon. I have for several years represented the entire commercial bituminous coal industry or substantial sections of the industry in Alabama by reason of official connection with the Divisional Coal Code Authority under the National Recovery Administration, having been designated and acted as Presidential Member of the Divisional Code Authority during the life of the NRA Code, and having been Chairman of the Bituminous Coal Producers Board under the so-called Guffey Act until those measures were annulled by the United States Supreme Court. Since the annulment of the latter I have been President of Alabama Coals, Inc., an agency organized by certain of the coal producers in Alabama in accordance with the decision of the Supreme Court in the Appalachian Coals Case.

As a result of reports compiled from the various producers of coal in Alabama during the period of the NRA Code and Guffey Act administration, I am generally familiar with the statistical data of the industry in Alabama. Much data is available to me through the reports made by the units in the industry to the federal authorities and to the district boards mentioned above; from official or semi-official reports to the State Mine Inspector of Alabama; from reports issued by the U. S. Bureau of Mines and from reports issued by the U. S. Department of Labor.

[fol. 197] Based on this data I am able to give the annual production of coal in Alabama by tons for 1923-34; the average days operated by the Alabama mines for 1923-34; the increase or decrease of employees for 1923-34; and to estimate therefrom total wages for the same period. This data is set out in Table I.

Table I.—Statistical Data, Bituminous Coal Industry of Alabama

Year	Annual production (tons)	Days operated	Average number employees	Increase or decrease in employees each year	
				Inc.	Dec.
1934	9,142,000	185	18,851	614	....
1933	8,760,000	148	18,237	....	2206
1932	7,857,000	107	20,443	....	2530
1931	11,999,000	136	22,973	....	1420
1930	15,570,000	189	24,393	....	815
1929	17,944,000	231	25,208	....	500
1928	17,621,000	222	25,708	....	1907
1927	19,766,000	231	27,615	270	....
1926	21,000,000	266	27,345	248	....
1925	20,004,000	246	27,097	....	859
1924	19,130,000	220	27,956	....	2079

I am able to say that no data exists from which an accurate constructive application of the Alabama Unemployment Compensation Act could be applied even to past years, for the reason that no record is available as to the number of employees who left the service of the respective employers or the conditions accompanying their leaving or the amount of their "full time weekly wage" as provided by the Act, at their last employment, or what credits if other- [fol. 198] wise eligible would have applied against the $15 per week maximum compensation, or whether they would have been eligible for the full sixteen weeks of the maximum initial benefit period, or for any extended benefits. These uncertainties prevent accurate application of the Act to a past period without involving enormous and in fact impracticable research as to each employee leaving the service, and such application is no less impracticable for the period beginning two years hence, as contemplated by the Act.

Nevertheless there can be ascertained with reasonable accuracy the amount of the contributions which would have been paid by the industry had the Act been in force for the period 1923 through 1934.

If net increase or decrease in employment as applied to the industry as a whole be regarded as the test of eligibility to benefits, and if it be assumed that the net recession in the number of employees indicated eligibility for the entire number for the full initial period of sixteen weeks and at the maximum of $15 per week, then the withdrawals of benefits from the fund can be calculated approximately. The result is as set out below in Table II, assuming a con-

tribution equal to the schedule provided by the Act, and applying for the fifth year the average minimum of 3% levied upon coal mine employers in the aggregate subject to the Act plus a flat 1% levied upon the employees.

[fol. 199] Table II.—Estimated Wages, Taxes and Payments

Year	Increase or decrease in employees each year		Total wages	Tax	Payments based on $15 per week for 16 weeks
	Inc.	Dec.			
1934	614	....	$12,762,000	$510,480	.....
1933	....	2206	6,451,000	258,040	529,440
1932	....	2530	6,561,000	262,440	607,200
1931	....	1420	11,277,000	451,080	340,800
1930	....	815	17,241,000	689,640	195,600
1929	....	500	22,535,000	901,400	120,000
1928	....	1907	22,828,000	913,120	456,080
1927	270	....	26,409,000	1,056,360	.....
1926	248	....	30,114,000	1,204,560	.....
1925	....	859	27,730,000	1,026,010	206,160
1924	....	2079	25,707,000	719,796	498,960
1923	1866	....	28,220,000	536,180	.....
				8,529,106	2,954,240
Excess Collections					5,574,866
				$8,529,106	$8,529,106

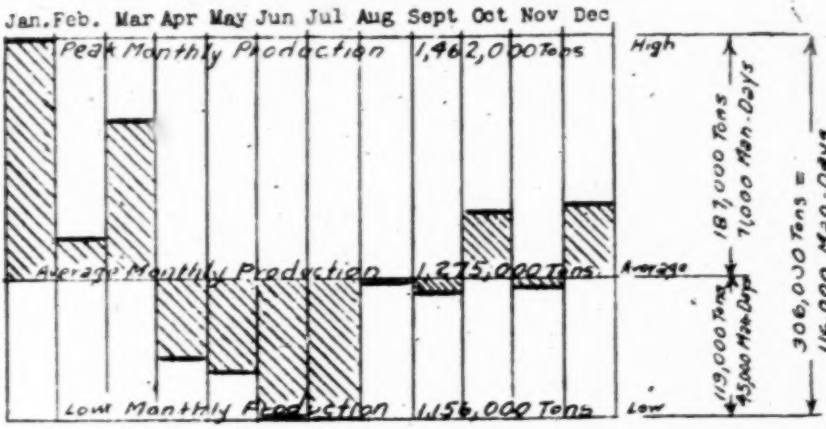
[fol. 200] As stated above, it cannot be assumed that this accurately portrays the full number of exits which might have become eligible to benefits during this period. On the contrary, it may well be that even if the number of exits be increased as not being accurately reflected in the net increase or decrease in employment from year to year, it is probable that a large number of the exits avail themselves of farm work and farm maintenance known to exist generally throughout the coal field. A large number of the miners in Alabama have been recruited from the farm population in the general vicinity of the mines, and make use of these farms as bases during times of low employment. This is particularly true as applied to the seasonal reduction in personnel or working time applicable to the coal industry; but this assertion is not intended to modify the statement first above made that it is obviously impracticable to compile an accurate constructive application of the operation of the Act. The above table does not carry forward any computation for extended allowance of benefits beyond the sixteen weeks period conditionally established by the Act. If it were assumed that the same number assumed to be eligible for fifteen weeks in the above table were in fact eligible for an extended term of ten weeks under the extended

[fol. 201] provisions of the Act at the full allowance of $15 per week, there would be an additional amount of benefits withdrawn of $1,839,000, which would reduce the excess in contributions over collections (benefits) during the period 1923-34, to $3,735,866.

The seasonal nature of coal production in Alabama is shown by the average production per month over the period 1921-35 set out on the following graph.

Graph Showing Average Monthly Production Alabama Coal Mines

Fifteen Year Period 1921-1935



During the past decade the number of employees in the Alabama coal industry has been reduced on account of decreasing production from approximately 30,000 to approximately 18,000. This shrinkage in employees would have [fol. 202] been even greater if there was not an attempt on part of employers in the industry in Alabama to spread the work among a larger number of employees than were actually required for economical operation in order to give a greater number at least partial employment. To illustrate by comparison the number of employees being held in the industry in Alabama, the Bureau of Mines for 1934 states that in Alabama the average tons per day per man was 2.62; in West Kentucky, one of Alabama's most vigorous competitors, the average tons per day per man is 5.11. In other words, twice as many men are being used in Alabama to mine an equivalent tonnage as are used in West Kentucky. While this is partially due to the great natural

handicaps and disadvantages of production, the spreading of work among a greater number of employees also contributes.

If this Act becomes and continues operative, there is no doubt that the industry will be forced to even greater mechanization. This will mean that machinery upon which no payroll tax is paid will be substituted for man power. The saving in contribution to the unemployment fund will to a large measure offset the capital investment in mechanization. It is obvious that such a program, which would be forced upon the industry if it is to remain in competition, will shift the burden of responsibility for employment of those now working in the industry upon the State. It is also obvious that such a program will reduce the contribution to the unemployment fund which would be represented by 4% of the wages that those employees would have earned.

[fol. 203] The amount of the contribution annually by the coal industry, exclusive of employee contributions, based on a production of 9,142,000 tons in 1934 (which is to be compared with the peak of 21,000,000 tons in 1926) would amount to $382,860 annually, assuming the application of the aggregate average 3% rate to the industry. This contribution amounts to 4.2¢ per ton. All cost and realization figures covering periods of 1933, 1934 and 1935, for Alabama commercial mines, furnished under NRA and the Guffey Act administrations, showed that Alabama producers operated at a loss varying from 3 to 6 cents per ton, exclusive of financing charges. This loss was due to high cost and inability to get a compensatory realization on account of competition of other forms of fuel and energy. To add another 4.2 cents to the cost simply means that Alabama coal is placed at a still greater disadvantage in its struggle for existence with its practically laborless competitors, natural gas, fuel oil and hydro electricity. Further loss in production would ensue and further unemployment. These competitive industries would contribute very little to an unemployment fund.

The reports furnished under NRA and referred to above showed further that the coal industry was assessed for the cost of state and local government operation, exclusive of [fol. 204] income taxes, a total of 5.92 cents per ton. The tonnage tax has since been reduced 1¢. On the basis of tax

payment of 4.92 cents per ton for taxes other than the tax contemplated in this Act the amount of such tax payments on the 1934 basis of production would be $449,790.

Herbert S. Salmon.

Sworn to and subscribed before me, this 17th day of October, 1936. L. J. Coran, Notary Public. (Seal.)

[fol. 205] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF J. M. JACKSON, JR.

Alabama Water Service Company

My name is J. M. Jackson, Jr. I am Vice President and Treasurer of Alabama Water Service Company. I have made investigation of its books and records as to employment, payrolls and other data referred to herein in connection with the application of the Alabama Unemployment Compensation Act.

The Company is engaged in the operation of waterworks and other utilities within the State of Alabama. A schedule of its various operations within the State of Alabama since January 1, 1930, is shown on Exhibit A, attached hereto.

The total payroll of the company in all its operations during each of the years 1930 through August, 1936, and the total contribution which would have been made by the company and its employees had the Alabama Unemployment Compensation Act been in effect as of January 1, 1930, are shown by the following table:

	Total Payroll	Rate of Contribution	Total Contributions
1930	$148,109.38	1.9	$2,814.08
1931	140,111.38	2.8	3,923.12
1932	121,438.49	3.7	4,493.22
1933	119,497.56	3.7	4,421.41
1934	128,805.70	3.7	4,765.81
1935	168,589.84	3.7	6,237.82
1936	145,927.66	3.7	5,399.32
	$972,480.01		$32,054.78

[fol. 206] I have examined the company's records for the period from January 1, 1930, to date with reference to every employee who has for any reaso left the service of the

company during that time, for the purpose of making a constructive application of the Alabama Unemployment Compensation Act to the company assuming the Act to have been in operation during the period. The total number of employees who have left the service of the company for any reason during this period is sixty nine.

The total number of employees on the payroll of the company during each month of the years involved is shown by the table attached hereto marked Exhibit B. Changes in the number of employees caused by the sale or purchase of plants during the period are explained on Exhibit B.

With reference to each of the sixty nine employees who have left the service of the company during the period (excluding those who left the service by reason of sale of plants, all of whom, so far as is known, continued in the service under the operations by the purchasers), I have ascertained the actual weekly wages paid, the date when service terminated, and have calculated the benefits which would have been payable to such employees under the Act, assuming that such employees would have been entitled to the maximum number of weeks of benefit. In many instances I have been able to ascertain what happened to these employees after leaving the service of this company and in calculating the total benefits which would have been [fol. 207] payable to former employees of this company during this period, I have excluded those former employees whom I know would have been ineligible for benefits by reason of having obtained other employment or for other reason.

Of the sixty nine employees who left the service during this period, 4 died, 25 resigned or voluntarily quit, 3 were transferred to affiliated companies, 36 were discontinued, and 1 left on account of illness. Of the 36 employees who were discontinued, 14 were discharged for cause.

Excluding from benefits each employee whom I ascertained obtained other employment after leaving the company, and excluding those who voluntarily resigned in order to get married and keep house, assuming payment for the maximum number of weeks allowed under the Act (26), the total benefits which would have been payable during the period would have amounted to $6,481.47. Deducting this from the total contributions which would have been paid into the fund by the company and its employees, as shown

above, the unexpended balance of the fund contributed by the company and its employees would have been $25,573.31.

Aside from construction forces, directly employed in new construction, my opinion is that the foregoing reflects a fair average picture of the application of the Act to water and electric utilities within the State of Alabama. The turn-over is extremely small, the reduction of personnel is ordinarily impracticable, even during times of depression. [fol. 208] The period to which the above application is constructively applied represents the period of greatest depression in the history of the utilities and in my opinion represents a period which would show maximum theoretical benefits under the Act, if any benefits are to be regarded as discernible under the facts stated. Comparison of the contributions and maximum theoretical benefits makes plain as to this Company (and utilities generally in the State) that the establishment of individual company plans or reserves in trust would provide much greater benefits and much greater assurance of unemployment relief. There is no competition as between taxable utilities in Alabama, or as between utilities within and without the state, such as might give rise to an advantage from uniform imposition of the levy or tax.

J. M. Jackson, Jr.

Sworn to and subscribed before me this 17th day of November, 1936. L. J. Coran, Notary Public.

[fol. 209] EXHIBIT "A" TO AFFIDAVIT

List of Water and Electric Plants Operated During the Period 1-1-30 to 10-31-36 by Alabama Water Service Company

Water Plants	Electric Plants *
Abbeville	Andalusia
Albertville	Ariton
Andalusia	Banks
Attalla	Belleville
Bay Minette	Brantley
Bessemer	Brundidge
Brantley	Clio
Bridgeport	Dozier
Carbon Hill	Elba
Coffee Springs (Acq. 3-1-31)	Evergreen
Collinsville	Excel
Cordova (Acquired 4-1-31)	Frisco City
Decatur	Gantt
Dora	Glenwood
Eutaw	Goshen
Fort Payne	Kinston
Geneva	Luverne
Greensboro	Milo
Headland	Opp
Irondale	Red Level
Jasper	Repton
Leeds	River Falls
Monroeville	Samson
Newton	Troy
Oneonta	
Ozark	
Pinckard	
Prichard (Chickasaw)—(Acquired 8-1-36)	
Russellville	
Samson (Acquired 6-1-35)	
Sheffield (Tuscumbia)—(Sold 6-15-36)	
Wetumpka	
York	
Boaz	
Brighton	
Lipscomb	
Parrish	
Anniston (Sold 4-17-35)	
Girard (Sold 7-20-32)	

* All acquired 6-1-35.

[fol. 210] EXHIBIT "B" TO AFFIDAVIT

Total Number of Employees by Months, Alabama Water Service Co.

	1930	1931	1932	1933	1934	1935	1936
Jan.	106	112	101	96	97	97	130
Feb.	106	107	102	96	97	97	134
Mar.	108	109	101	96	97	97	134
Apr.	106	116	101	96	97	97	134
May	105	110	101	96	97	89(a)	134
June	104	106	101	96	97	130(b)	134
July	103	107	101	96	97	130	131(c)
Aug.	103	102	96(d)	96	97	130	131
Sept.	103	102	96	96	97	130	...
Oct.	135(e)	102	96	96	97	130	...
Nov.	120	102	96	96	97	130	...
Dec.	116	102	96	96	97	130	...

(a) Anniston Sold (8 employees).
(b) Alabama Utilities Co. Purchased (36 employees).
(c) Sheffield Sold (6 employees).
(d) Girard Sold (3 employees).
(e) Increase due to temporary construction work.

[fol. 211] [File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF F. W. GIST FOR DEFENDANT—Filed November 18, 1936

Before me, the undersigned authority, personally appeared F. W. Gist, who, being by me first duly sworn, did say upon his oath, that:

I am economic adviser to the Commissioner of Agriculture of the State of Alabama, and have held such position since February 1, 1936. For thirty years prior thereto, I was an Agricultural Statistician of the Department of Agriculture of the United States of America, and from 1915 to 1936 I was stationed in and resided in Alabama and was constantly engaged in the study of and in the recording of the conditions concerning agricultural acreage, production and values in Alabama. This included studies of outside occupations of farmers and their income supplemental to that which they received from farms.

From December 1, 1927, to February 1, 1936, I worked under a co-operative agreement between the Agricultural Department of the United States and of the State of Alabama, and was entitled "State and Federal Agricultural Stati-cian" in Alabama. Under this arrangement, it was my duty to observe, study and record matters relating to trade and industry as well as those relating to agriculture in

Alabama and during those eight years I continuously did so.

All of my work in Alabama has required me to be and [fol. 212] keep informed of the census reports of the United States Government and I am familiar with them. Recently, at the request of the Attorney General of Alabama, I have examined and studied particularly those parts of the reports of the United States Census of 1930, relating to the gainful employment of the population of Alabama and the various classifications of Alabamians engaged therein, their wages, unemployment, and other matters which appeared to me to be relevant to the Alabama Unemployment Compensation Law, its application in Alabama and those parts of the population of Alabama that are affected by said law.

I have also studied such other material as is available to me touching this subject, notably the index numbers reporting employment of wage earners which are published and issued by the United States Department of Labor, and I have applied said index numbers to the figures of the census and have compiled certain attached figures as a result thereof.

In the attached four pages, I have accurately copied from said census reports and from the said Department of Labor reports all the figures and the accompanying statements shown in these pages as being from such reports. From my observation, study and experience in my official capacity, I have made such figures and drawn such conclusions as are stated in these pages as not being copied; to the best of my knowledge, information and belief, my figures and my conclusions, as stated in these pages, are true, and as accurately as is possible for me, I have there truly pictured the conditions of employment in Alabama trade and industry on January 1, 1930, as shown by the United States census and the changes therein since that date and the changes [fol. 213] in prospect therein up to 1941 as such prospects are indicated by the proper statistical use of said index numbers and census figures. Insofar as the prospects can be reasonably arrived at from the materials at hand and from my knowledge and experience as observer, student, compiler and reporter of information concerning such matters, the prospective changes in trade and industry in Alabama up to 1941 are accurately figured in said pages.

(Signed) F. W. Gist.

Subscribed and sworn to before me at Montgomery, this 16th day of November, 1936.

Witness my hand and seal.

(Signed) Florence Ferrell, Notary Public, Montgomery, Alabama. (Impression Seal.)

[fol. 214] EXHIBIT TO AFFIDAVIT

Trend of Employment in Alabama

The United States Bureau of Labor Statistics has published since 1932 index numbers of employment in all groups of endeavor in Alabama. While these index numbers are based on December, 1931, as representing 100, it is possible to change the base to 1929, and calculate, relative to the official figures, a series of index numbers from 1929 down to and including 1935. So calculated, those index numbers are as follows, excepting the year 1930, for the reason that that year was not materially different from 1929:

1929	100.0
1931	66.5
1932	61.9
1933	67.7
1934	71.1
1935	72.1

The United States Census of 1930 reported the number of persons gainfully employed in Alabama, and also the number of salary and wage earners. These are stated as follows:

Gainful Workers, Alabama, 1930

	Persons Engaged	Salary and Wage Earners
Agriculture	492,761	80,105
Forestry and Fishing	5,476	4,417
Mining	35,781	33,735
Manufacturing	185,681	130,034
Transportation	61,157	50,148
Trade	73,568	64,646
Public Service	12,914	12,914
Professional	39,657	35,968
Domestic	102,345	97,751
Clerical	31,321	31,321
Construction	10,075	9,956
	1,038,736	550,975

The difference between the two columns of figures represents what may be called owners of business gainfully occupied but not receiving salaries or wages and therefore not subject to the Unemployment Insurance Act. In the case of agriculture the difference also includes numbers of farm families working without stipulated pay.

Certain types of workers are exempted from the operation of the Unemployment Insurance Act. These are enumerated in Section 2, Paragraph C. It is possible to determine these exemptions from the United States Census of Occupations except for those mentioned in Paragraph 4, under Paragraph G, designated as "Service performed by an individual in the employ of his son, daughter or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother". It is believed that such of these persons as might otherwise be subject to the Act are few in number and would not affect the total [fol. 215] sufficiently to materially change the proportion of those exempt to those subject to the Act. Those persons thus exempt, the number of whom may be definitely determined, are given below:

Agriculture	80,103
Manufacturing	317
Transportation	19,479
Trade	4,145
Public Service	12,914
Professional	22,789
Domestic	42,865
Total	182,612

Subtracting this total number specifically exempted from the total number of salary and wage earners, there are left 366,363 persons who would have been subject to the Act in 1930.

The Act further exempts all establishments employing less than eight persons. The proportionate number thus exempted will vary in the different groups but a reasonable average deduction for such exemption would be about 25%. Therefore, it appears that the number of persons employed on salary and wages in 1930 who would have been actually subject to the provisions of the Unemployment Insurance Act, was, in round numbers, 276,000.

Using the index numbers on employment shown above, it is possible to calculate the number of wage earners which would have been so subject from 1931 to 1935, inclusive. These are shown as follows:

1931	184,000
1932	171,000
1933	187,000
1934	196,000
1935	199,000

From the reports of the United States Bureau of Labor Statistics we give below the average weekly wage and the average annual wage paid per person in Alabama in all groups of industrial employment for the years indicated:

Year	Average Weekly Wage	Average Annual Wage
1929	$18.27	$980.00
1931	16.53	808.00
1932	11.35	590.00
1933	11.95	621.00
1934	13.24	725.00
1935	14.76	767.00

The total wages paid, therefore, which would have been subject to the assessment of the premium for Unemployment Insurance would have been as follows:

[fol. 216]

1931	$148,672,000
1932	100,890,000
1933	118,027,000
1934	142,000,000
1935	152,633,000

A somewhat uncertain and yet a reasonable projection of persons employed can be applied to succeeding years, which may be stated as follows:

Year	Persons Employed	Annual Wage
1936	205,000	$795
1937	213,000	829
1938	221,000	855
1939	226,000	881
1940	234,000	907

The number of persons employed as given above is a continuation of the relative increase which occurred from 1932

to 1935. The weekly wage given, however, is an arbitrary addition of fifty cents per week to the average wage to 1935. Both these columns of figures are, of course, problematic, but, since they are used for the purpose of illustration as to the probable collections and probable benefits under the Unemployment Insurance Act, they may be accepted as reasonable. If they be so accepted, we can then set up probable figures as follows:

Year	Annual Wages	Premium	Total Collected
1936	$162,675,000	1.9	$3,689,000
1937	176,567,000	2.7	4,944,000
1938	188,956,000	3.7	6,991,000
1939	199,106,000	3.7	7,367,000
1940	212,238,000	3.7	7,853,000
			39,244,000

If in 1941 there should be a recurrence of unemployment somewhat equivalent to the period we have just come through, and employment in the industrial groups under consideration should drop to, say 170,000, we would find Alabama with something like 64,000 unemployed persons who would be entitled to the benefits of this Act. Since under the Alabama Law those entitled to benefits would receive 50% of their former wage, and assuming that the 1940 wage as shown above would be taken, each person would be entitled to $8.63 per week for sixteen weeks, or $138.00 for the period. Thus it would require $8,832,000 out of the accumulated funds to pay these benefits. The total collections shown above would, therefore, maintain the purposes of the Act for three and a half years without giving consideration to any further collections during that period.

It is interesting to note from the trend indicated by the index numbers given above that an average of 36.33% of the persons employed in 1929 were unemployed during the period 1931 to 1935, inclusive. This indicates the severity of the depression through which we have passed. It indicates, as well, the need for insurance against unemployment, and also indicates the cost involved in such insurance [fol. 217] in a period of unemployment such as has been experienced during the years under consideration.

The trend of employment in industry as compared with

the total number of persons gainfully occupied in Alabama from 1900 to 1935 may be stated as follows, the figures being taken from the reports of the United States Census for the year indicated:

	Total Employed	Employed in Industry	Per Cent.
1900	763,188	149,238	19.5
1910	997,524	213,252	21.4
1920	908,216	278,624	30.7
1930	1,026,296	345,295	33.6
1935 (Est.)	1,029,000	230,699	24.3

The persons employed in industry shown above are those reported at each census as engaged in Mining, Manufacturing, Transportation, and Trade, and the total employed as given above includes all persons gainfully occupied. It will be noticed that the percentage of the total employed which was employed in industry showed a steady upward trend to 1930, but that from that year to 1935 the proportion employed in industry showed a considerable falling off in proportion to the total employed. The figures for 1935 are estimated by using the index numbers first set out in this discussion. The falling off in industrial employment disclosed by the figures for 1935 is believed to be due to the proportionate unemployment in industry, which is shown throughout this discussion, and that a material proportion of such falling off represents persons who have drifted back from urban employment to the rural homes from whence they came. This belief is confirmed by the fact that the United States Census of Agriculture for 1935 shows a considerable increase in the number of persons engaged in agriculture but without specific wages therefor.

[fol. 218] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF J. L. KAUFMAN—FOR DEFENDANT—Filed November 18, 1936

Before me the undersigned Notary Public — and for said county and state personally appeared J. L. Kaufman, who

is known to me and who being by me first duly sworn, deposes and says:

(1) I was duly appointed, qualified and am acting as Chairman of the Alabama Unemployment Compensation Commission, hereinafter called the Commission, created under the provisions of the Alabama Unemployment Compensation Act (General Acts of Alabama, 1935, page — et seq. as amended); hereinafter referred to as the Act; that under my general supervision and control as Chairman, to the extent provided in said act, the Commission has administered, and is now administering, the provisions of such act in the manner required by the act and by section 10 thereof.

(2) The Commission has not engaged the services of any person or employee other than those authorized by the act and section 10 (d) thereof nor has the Commission engaged in any publication or propagandizing activities other than those authorized by the act and section 10 (c) thereof and reasonably necessary to the carrying out of such provisions; nor has the Commission expended any funds for any publication purpose other than for those prescribed by section 10 (c).

(3) The Commission has adopted rules and regulations requiring employers subject to the act to file with it such reports as are reasonably necessary to the efficient en- [fol. 219] forcement of the provisions of the act, and to keep such reasonable records with reference to the number and status of their employees as will enable the Commission correctly to determine the amounts of wages paid to their employees who are subject to the act and the proper amount of contributions due from such employees and the employer under the act. The general rules and regulations so adopted are not discriminatory or oppressive as to any employer, but are of a general nature applicable alike to all employers subject to the act and are reasonably necessary to the efficient and effective administration of the act.

(4) The act makes no provision for the imposition by the Commission of any summary or administrative penalty, and such penalties as are provided by the act, that is to say, interest at the rate of 1% per month on delinquent payments due as provided by section 14, and the criminal penalties for intentional violations or fraud provided by section 15 of the act, can only be enforced or imposed by an orderly

proceeding in a Court of law. I am informed and believe, and upon such information and belief state, that in any such action at law to enforce the payment of contributions due, with interest, or to impose the criminal penalties provided, any person could, and would have the opportunity to, assert every claim, right or immunity which he might have or claim under the Constitutions and laws of the United States and of the State of Alabama.

(5) The Commission has not threatened any person or employer subject to the terms of the act that in the absence of compliance with the act and payment of the contributions demanded, that it will not issue certificates with respect to credits under Title IX of the Federal Social Security Act. The Commission has made no such threats to the Southern Coal and Coke Company or the Gulf States Paper Company. The Commission has properly demanded [fols. 220-221] of the Southern Coal and Coke Company and the Gulf States Paper Company, as well as all other employees subject to the act, that they pay the proper amounts of contribution due from them under the terms of the act. The Commission has no power to compel the grant or denial of any credit or off-set against the tax levied under the terms of Title IX of the Federal Social Security Act, and unless the contributions required to be paid under the Alabama Act are in fact paid by the person claiming the right to such off-set or credit, the Commission is without authority to issue, and cannot issue, to any such person a receipt or certificate such as might entitle such person to any credit under Title IX of the Federal Social Security Act.

(6) That hereto attached as Exhibit "A", is a true and correct copy of the "Employers Contribution Report Covering Employer and Employee Contributions", which is the general form required by the Commission, filed with the Commission by the Southern Coal and Coke Company, showing the number of its employees and the hours worked, by the week, for the period from May 1, 1936 to August 31, 1936, with dates inclusive.

(7) It appears from this report that for the two-week period ending May 15, 1936 the Southern Coal and Coke Company employed 324 persons, subject to the Act, for a total of 22,917 hours; that for the two-week period ending

July 15, 1936 the number of employees declined to 306, but that the total hours of work declined to 15,924, showing an apparent total unemployment, during the latter period, of 18 employees, and partial unemployment of the remaining 306 of approximately fifty per cent or approximately thirty-three and one-third per cent according as the percentage is calculated upon the minimum (for the two-week period ending July 15) or maximum (for the two-week period ending May 15) number of hours worked.

. . . . . .

[fol. 222] (11) Except as restrained therefrom by the Courts the Commission will continue to administer the Alabama Unemployment Compensation Act in accordance with its provisions.

J. L. Kaufman.

Sworn to and subscribed before me this the 17th day of November 1936.

Florence Ferrell, Notary Public, Montgomery County, Alabama. (Seal.)

(Here follow two photos, side folios 223 and 223½)

COPY

EXHIBIT "A" TO AFFIDAVIT

SOUTHERN COAL AND COKE CO.
BOOTHTON, ALABAMA 12-00089

Form C.B. No. 2
Alabama U.C.C.

EMPLOYER'S CONTRIBUTION REPORT COVERING EMPLOYER AND EMPLOYEE CONTRIBUTIONS

For the Period ~~January 1~~ May 1 through ~~April 30~~ August 31 1936, Due not later than ~~September~~ October 28, 1936.

Location of establishment covered by this report BOOTHTON, ALABAMA
(If address is different from that shown above in right hand corner.)

(1) Duration of pay period		(2) Date of end of period	(3) Number of covered employees	(4) Total hours worked by covered employees	(5) Money wages	(6) Money value of Other remuneration	(7) Total earnings Cols. 5 and 6
Week	1						
	2						
	3						
	4						
	5						
	6						
	7						
	8						
	9						
	10						
	11						
	12						
	13						
	14						
	15						
	16						
	17						
	18						
		Total					
Half Month	1	May 15	324	22,917	$14,590.67		$14,590.67
	2	May 31	317	22,194	14,274.61		14,274.61
	3	June 15	316	20,244	13,141.81		13,141.81
	4	June 30	312	18,881	12,210.96		12,210.96
	5	July 15	308	18,224	11,156.15		11,156.15
	6	July 31	313	20,189	13,541.99		13,541.99
	7	August 15	315	18,276	11,998.71		11,998.71
	8	August 31	317	20,729	13,310.21		13,310.21
		Total			$105,025.11		$105,025.11
Month	1						
	2						
	3						
	4						
		Total					
Deferred payments if any							
		Grand Total					$105,025.11

Employer's Contribution (9/10 of 1 per cent of grand total Column 7) . . . . . $ 947.25
Employee's Contribution (total of employees' contributions, each employee's contribution being 1 per cent of his wages) 1,051.23
Total Contributions $1,998.48
1 per cent per month interest if delinquent from due date as set out above . . . . . _____
Corrections (if any) for previous over-payment . . . . . _____
Corrections (if any) for previous under-payment . . . . . _____
Total remittance enclosed . . . . . $ 1,998.48

(Make check payable to Alabama Unemployment Compensation Commission and send to 623 Adams Avenue, Montgomery, Ala.)

I certify that the information contained in this report, required in accordance with Section 10 (g) of the Alabama Unemployment Compensation Act, is true and correct in accordance with said Act. No part of the contribution reported as payable on behalf of the employer was deducted or is to be deducted from employees' wages.

Name of Employer SOUTHERN COAL & COKE COMPANY

By W. F. Puter

Date signed _____ Official Title President

On the first line of the signature, show the firm name as given in the address space at the top of the report (unless same has been changed, in which case show new or correct name). If the firm is a corporation, the second line must be signed by a qualified official; or if a partnership, by a partner. If signed by a corporation official, show title.

(See reverse side for Instructions)

223

EXHIBIT "A"

166A

Reverse side
Form C.R. No. 2
Alabama U.C.C.

INSTRUCTIONS FOR MAKING CONTRIBUTION REPORT

Pay Roll Period

If you have weekly pay rolls (for all or some of your employees) use lines 1 to 18 for the 18 weeks from May 1 through August 29, 1936. (The week of April 26 to May 2 should be split to begin from May 1. The week of August 30 to September 5 should be included on the September report.) (The weeks need not be split between the months May-June, June-July, and July-August.)

If you have bi-weekly pay rolls, use as many lines as may be needed from 1 to 18, under "Week".

If you have semi-monthly pay rolls (for all or some of your employees) enter the total of each pay roll on Lines 1 to 8 for the 8 half months May through August, under "Half Month".

If you have a monthly pay roll (for some or all of your employees), enter the total for each pay roll for the 4 months, May through August, on the 4 lines under "Month".

Deferred Payments

On this line should be entered all deferred payments—that is, all payments such as annual bonuses for services performed during the months for which this report is being made. After January 1, 1937 a supplementary report must be made for all such deferred payments, indicating the recipients and the period for which each payment is made. In all cases where the accrued value or the amount payable of a deferred payment is known, such amount should be included with money wages and reported for the month in which earned.

Employers having several pay rolls on the same bases within the same period must make separate report of each pay roll within the period on the same basis.

Total all pay rolls opposite "Grand Total".

Date of End of Pay Period

In Column 2 the date desired is the date of the end of the pay period, not the date that wages are paid.

Covered Employees

In Column 3, enter the total number of covered employees on the pay roll for the pay roll period and in employment as defined by Section 2 (g) of the Act. (See also Article V, Rules and Regulations, for excluded employment.)

Hours Worked

In Column 4, enter actual hours worked by all covered employees whose remuneration varies with the number of hours they work; for employees on a fixed stipend, scheduled weekly hours should be substituted.

Employers who have not kept on their pay rolls a record of the hours worked by each employee may omit this column in making their first report. Such information must be supplied for all subsequent months.

Total Earnings

Column 5 must contain the total cash wages paid for each pay roll period.

Column 6 must show the total money value of all remuneration other than cash for each pay roll period (See Article VI, Sections 600-619, Rules and Regulations).

Column 7 must contain the total earnings of all covered employees for each pay roll period and should equal the total of Columns 5 and 6.

GENERAL INSTRUCTIONS

Fill out the report on typewriter or in ink. If you have separate pay rolls for separate establishments, enter the summary for each establishment on a separate sheet and attach to this form. The Commission will furnish extra copies on request.

Do not send cash. Remittance should be in the form of check or money order, payable to Alabama Unemployment Compensation Commission. Cash payments may be made to the Cashier of the Commission at 628 Adams Avenue, Montgomery, Alabama. (See Sections 717-719, Rules and Regulations.)

Additions for previous over-payments and deductions for previous under-payments can be made only upon specific authorization from the Commission and copies of such authorization should be attached to the report on which such corrections are shown. (See Section 716, Rules and Regulations.)

Send the original of the report to Alabama Unemployment Compensation Commission, Montgomery, Alabama, preserving monthly copy to facilitate verification by authorized representatives of the Commission. If one sheet is not sufficient to include all pay rolls of employers during reporting period, additional sheets of this form should be used, numbered 1, 2, 3, etc., in which event the monthly totals should be summarized and inserted only on Grand Total line of the last sheet of the group.

Additional forms may be secured on application to the Commission.

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[fol. 224] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF PEYTON BIBB

Publications of the Alabama Mining Institute.

Before me Florence Ferrell, a Notary Public in and for the State of Alabama, Montgomery County, personally appeared Peyton Bibb, who is known to me and who being by me first duly sworn, deposes and says:

I am over the age of twenty-one years and a resident of Birmingham, Alabama.

The Alabama Mining Institute located at Birmingham, Alabama is an association composed of, and financially supported by, coal mining operators of Alabama, for the purpose of fostering and advancing the interests of the coal mining industry in Alabama. Approximately eighty-five percent (85%) of the coal mining operators in Alabama, individual and corporate (and virtually all operators of mines with rail connections) are members of the Alabama Mining Institute, and this group produces approximately ninety-five percent (95%) of the coal mined and distributed in and from the State of Alabama. The offices and Board of Governors of the Alabama Mining Institute are either individual coal operators or executives of coal companies.

[fol. 225] The Southern Coal and Coke Company, located in Shelby County, Alabama, (the plaintiff in case No. 691, before this court) is a member of the Alabama Mining Institute, and Mr. George F. Peter, the President of the Southern Coal and Coke Company, is a member of the Board of Governors of the Alabama Mining Institute. The Alabama Fuel and Iron Company, located in St. Clair County, Alabama, is a member of the Institute.

The members of the Alabama Mining Institute file with it periodically reports of their operations.

During the current year, this Alabama Mining Institute has officially published and circulated generally in Alabama by mail and otherwise, a series of bulletins on the history of coal mining in Alabama. That attached hereto as Exhibit "A" and made a part hereof, is Bulletin Number Eleven, of this series entitled "Coal Mining in Alabama—Utilization and Distribution of Coal," published and circulated in October, 1936.

That hereto attached as Exhibit "B" and made a part

hereof is Bulletin Number Twelve of this series entitled "Coal Mining in Alabama—Coal Mining Employees," published and circulated in October, 1936.

I am informed by the officials of the Alabama Mining [fol. 226] Institute, and believe, and upon such information and belief, state that the facts and statistical data shown in these two Bulletins, except as therein otherwise indicated were correctly assembled and compiled from the reports of its own members and from data furnished it by carriers, coal sales agencies and other persons in Alabama; that the figures therein shown as having been taken from the records of the United States Government and the United States Bureau of Mines were correctly abstracted from such records.

Peyton Bibb.

Sworn to and subscribed before me this 17th day of Nov. 1936. Florence Ferrell, Notary Public, Montgomery County, Alabama. (Seal.)

EXHIBIT "A" TO AFFIDAVIT

ALABAMA MINING INSTITUTE

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Coal Mining in Alabama

UTILIZATION AND DISTRIBUTION OF COAL

Alabama coal is produced on 31 seams of various grades, each having different characteristics, and adaptable to many uses.[1] It is prepared in various sizes and grades to meet customer requirements, the principal uses being for open grates, stoves, stationery boilers including steamships, railroad locomotives, blacksmithing, all types of heating plants, whether fired by hand, mechanical stokers or pulverizers, also for making gas and coke.[2]

The demand for Alabama coal, which compares favorably in quality with that mined in other competing states, increased steadily up to 1926 when the maximum production of over twenty-one and one-half million tons was reached. Since that time the production has decreased at an alarming rate, being reduced to around nine million tons

(1) Only about 10% of the coal produced in the State is "Lump" or other sizes known as "Domestic" Coal.

(2) The coal produced from most of the seams in this State are not adaptable or susceptible of use in making coke, either under the "High" or "Low" Temperature Carbonization processes; therefore, the product from such seams must be disposed of in its raw state.

during the years 1933, 1934 and 1935, or the lowest since 1900.

The table below shows a comparison of the consumption of Alabama coal for the years 1926 (peak year) and 1935:

	1926 Tons	1935 Tons	Decrease Tons	Decrease Percent
Used for Domestic Purposes	2,394,791	989,273	1,405,518	58.69
Used for Railroad Fuel	7,467,590	2,926,741	4,540,849	60.80
Used for Steamship Fuel	689,443	230,255	459,188	66.60
Used in Steam Power Plants	4,383,357	1,707,213	2,676,144	61.05
Used in Making Coke	6,573,631	2,846,518	3,727,113	56.70
Total	21,508,812	8,700,000	12,808,812	59.55

During the year 1926 about one-third of the coal produced was shipped outside the State, but in 1935 less than fourteen percent was used outside of Alabama.

CONSUMPTION OF ALABAMA COAL BY STATES

	1926 Tons	1935 Tons	Decrease Tons	Decrease Percent
Alabama	14,410,904	7,508,100	6,902,804	47.90
Georgia	2,344,461	374,100	1,970,361	84.04
Mississippi	2,043,337	295,800	1,747,537	85.52
Louisiana	1,720,705	200,100	1,520,605	88.37
Florida	387,159	182,700	204,459	52.81
Tennessee	322,632	69,600	253,032	78.42
Other States	279,614	69,600	210,014	75.10
Total	21,508,812	8,700,000	12,808,812	59.55

The heavy losses above noted are due mainly to the inroads or displacement of Alabama mined coal in its natural trade territory by laborless fuels and power, viz: natural gas, oil and hydo-electricity, together with coal produced at lower costs in other states.

This decline in consumption was the principal or proximate contributing cause (from 1926 to 1935) of closing

down one hundred and nineteen (119) coal mines (with rail connections) in Alabama and incidentally an enormous loss of capital invested therein; as well as the disemployment of approximately nine thousand mine employes.[3]

It represents an annual loss in cash income to the State of Alabama of over thirty million dollars ($30,000,000.00), of which over twenty-one million dollars ($21,000,000.00), or the equivalent of over five million "man days" work, was lost to coal mine employes. Also many million dollars were lost to those furnishing supplies, including farm products, to the mines and mine employes, to say nothing of the large amount in taxes lost to the State and counties.[4]

In addition to the above the public-carrier railroads serving the coal fields of Alabama have lost nearly ten million dollars ($10,000,000.00)[5] per year in freight revenue of which over four and a quarter million dollars ($4,250,000.00) would have gone to the railroad employes as wages. Needless to say, this also proportionately reduces the the market for the products of Alabama.

Not only the wage earners directly involved but every citizen of the State is consequently affected adversely by this decrease in income and curtailment in purchasing power above mentioned.

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(3) Also, the number of days work available to those now employed has decreased about 30% since 1926.

(4) Approximate loss per year (1926-1935):

Mine labor and salaries	$21,471,412.00
Mine supplies and equipment	7,211,361.00
Insurance premiums, royalties and miscellaneous	1,530,955.00
Taxes	630,193.00
Total	$30,876,921.00

(5) This does not include the revenue lost to privately owned railroads in the Birmingham district which handle a large tonnage of coal and coke and whose revenue and employment have also been materially reduced.

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A Trainload of Alabama Coal En Route to Market

EXHIBIT "B" TO AFFIDAVIT

ALABAMA MINING INSTITUTE

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Coal Mining in Alabama

COAL MINE EMPLOYES

Due to the adverse geological conditions in the coal fields of Alabama, referred to in our previous issues, the production of coal per man is considerably less than elsewhere as shown by comparison below and table on page 3.

NUMBER OF MEN REQUIRED TO PRODUCE 26 TONS OF COAL PER DAY

ALABAMA
SOUTHERN APPALACHIAN
VIRGINIA
HARLAN (KY)
WEST VIRGINIA
WEST KENTUCKY
ILLINOIS
INDIANA

In addition to the "miners", who break down and load the coal, a large number of "day men"[1] (non-producers) are required to operate and maintain the mine (including the tipple, preparation plant, etc., outside.)

The "day men" include many classes of skilled or semi-skilled labor, such as, engineers, motormen, electricians, bonders, wiremen, trackmen, rockmen, fanmen, weighmen, gas men, carpenters, machinists, blacksmiths, inspectors, supervisors, and others too numerous to mention.[2]

Furthermore, as most of the mines in Alabama are "slope" mines or "shaft" mines without natural drainage, they must be dewatered or freed of the accumulation of water which comes from underground springs and streams. Also, large quantities of surface water seep into the mines through crevices in the broken geological strata or cracks caused by subsidence of the overburden of the worked-out area and extending from the roof of the mine upward to the surface. This requires the purchase, installation and maintenance of large pumps and miles of pipe, at great expense, which are serviced by engineers, electricians, pipemen, pumpers, and their assistants, as well as heavy expense for power to pump millions of gallons of water daily upgrade several hundred feet.[3]

These various classes of labor are required in every coal mine, wherever located; however, a greater proportion of "day men" are needed in Alabama mines than in the mines of other states. This is due to the necessity of removing large quantities of rock (called "dead work") above or below the thin coal seams,[4] to provide sufficient head room for the mine workers and permit passage of mules, electric locomotive and mine cars. Also, the steep and variable grades

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(1) The "Day men" do all the work inside and outside the mine not performed by the "Miner." It requires about one "Day man" for each "Miner."

(2) Also many thousands of dollars must be spent for labor (as well as supplies) in opening and developing the mine before any coal is available for market.

(3) In some mines as much as 20 tons of water must be pumped out of the mine for each ton of coal produced.

(4) Some seams now being worked in Alabama are only 20 inches thick.

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underground caused by the necessity of following the pitching seams, which are broken up by faults, calls for more haulage men and timber men than are required in mines with thick, flat seams. Likewise, because of the much greater percentage of coal washed in Alabama, the number of men required to hand-pick the coal and operate the coal washing plants is far in excess of the number required in other states where only a very small proportion of the coal requires washing (over 73% of all Alabama coal is washed).

Because of these conditions and the relatively small amount of coal that can be broken down and loaded by the miner in Alabama, the production per man per day is much lower than it is in other coal fields. The table below is from the records of the United States Bureau of Mines for 1935.

	Average Tons Per Man Per Day[5]
Alabama	**2.62**
Southern Appalachian (part Tenn. and Ky.)	**3.38**
Virginia	**3.84**
Harlan Field (Ky.)	**4.34**
West Virginia	**4.73**
West Kentucky	**5.11**
Illinois	**5.62**
Indiana	**7.75**

In other words, it requires 10 men to produce 26 tons of coal per day (7 hours) in Alabama, whereas, less than 3½ men can produce that quantity in the same time in Indiana. (See illustration on front page.)

These conditions naturally increase the cost of production and reports of the Federal Government for 1934 show Alabama coal costs 13.34% more to produce than coal mined in the Southern Appalachian District—18.16% more than in Virginia—18.68% more than the Harlan Field (Ky.)—36.72% more than West Virginia—49.39% more than Illinois—and 52.61% more than Indiana. (West Kentucky figures are not available.)

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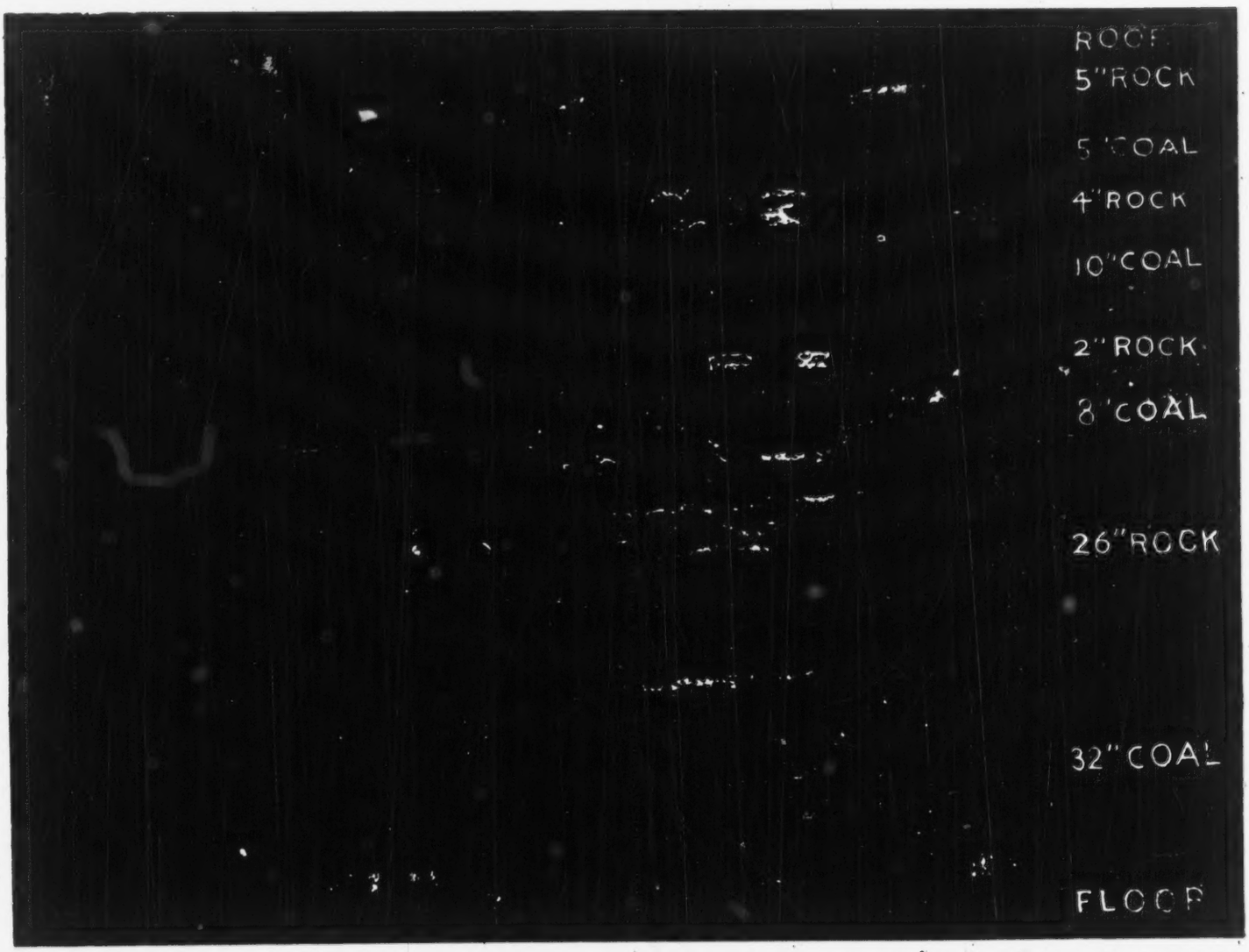
(5) "Tons per man per day" represents the total coal tonnage (per day) divided by the total number of mine employes.

Mining on 20-inch Clean Seam in Alabama, Two Miles Underground



Working Face in Room of an Alabama Mine (on "Big Seam") Showing Partings of Rock Between the Layers of Coal. There Are Also Numerous Thin Partings of Rock Not Visable or Indicated in the Picture. These Impurities Must be Removed by Hand-picking and Mechanical Washing Before the Coal is Shipped to Market.

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[fol. 235] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

Findings of Fact and Conclusions of Law—Filed December 15, 1936

STATEMENT

The Federal Social Security Act was approved August 14, 1935. The Alabama Unemployment Compensation Law was approved September 14, 1935, and amended by three Acts approved April 21, 1936. The Alabama Act follows the suggestions or requirements of the Social Security Act and has been approved by the Federal Social Security Board. The Alabama Act creates the Alabama Unemployment Compensation Commission to administer it, and its enforcement in court is required of the Attorney General of Alabama. Under the Alabama Act reports by employers have been required and payments, being payroll percentages in part deducted from employees' pay and in part paid by the employers, are already due and demanded. Failures to comply are punishable by cumulative penalties and by criminal prosecutions, all requiring court action. Two bills have been filed in this court seeking preliminary and permanent injunctions and other relief, against the members of the Alabama Unemployment Compensation Commission and the Attorney General of Alabama, one by the Southern Coal & Coke Company and one by the Gulf States Paper Company, and have been heard together by a court of three judges on the same evidence, and on their [fol. 236] respective pleadings. The Alabama Act is assailed as unconstitutional both under the equal protection and due process clauses of the Fourteenth Amendment, and under the Alabama Constitution, and the Social Security Act which is contended to be necessarily involved in the Alabama Act is assailed as being not within the powers of Congress and in violation of the due process clause of the Fifth Amendment. Other constitutional difficulties are alleged. Both preliminary and permanent injunctions are now for decision.

Findings of Fact

1. There is in each case diversity of citizenship and more than three thousand dollars involved exclusive of interest and costs.

2. If payment be made of the sums demanded their recovery, if the Act be unconstitutional, would be uncertain and difficult, no clear and adequate remedy at law being apparent, and there would arise a multiplicity of suits with employees whose pay was withheld. If payment be refused so as to test the validity of the Act by a forced collection, penalties and criminal liabilities would be incurred if the Act be valid, both numerous and serious, so that the remedy by resistance at law is not safe and adequate. The remedy here sought in equity is more certain and effectual.

3. The Act seeks to alleviate the public evils and private hardships of unemployment. The evidence aided by common knowledge shows that Alabama was originally and still is predominantly an agricultural State, and that in agriculture unemployment is not an acute problem. The land may always be tilled and will yield a living though business conditions be adverse, and even the old and the ill are generally worth their keep on a farm. The development of capitalistic industry has created a great class who work for others and have no capital but only their capacity to work. [fol. 237] On the average they save nothing and make no adequate provision for illness, old age or unemployment. Illness and old age though fairly certain to come are spread out in time and space. Unemployment becomes acute and cumulative in periods of business depression, the unemployed especially in industrial communities are unable to help each other, or to help themselves, and suffer great distress, even starvation. Sickness is apt to occur, criminality is encouraged, and riot and revolution risked. The whole public is vitally interested in ameliorating the distress of such unemployment.

4. In the past no special legislative remedy for unemployment has been attempted. Poverty, however caused or by whomever suffered, has had the traditional relief in Alabama by poor laws, through the counties and their general taxation. This relief is limited and proved wholly inadequate during the great depression of the past few years.

5. The remedy proposed in the Act of Sept. 14, 1935, is, as interpreted in behalf of the State of Alabama in the answers, not a relief for indigence, but a scheme for compulsory insurance against unemployment, in which the beneficiary draws his benefits not because he is poor but because he has paid for them. The relief is not complete, for there is a waiting period during which nothing can be drawn, and the relief when it begins continues in general for only sixteen weeks, and covers but half the wage loss in those weeks. But it gives a support for a time within which new employment may be found or the old resumed, and keeps some money in circulation to uphold general business; relieving the cumulative collapse that so often attends either local or general business depressions. The means adopted by the Legislature is appropriate to the end in view.

6. At the passage of the Act there were no accurate and full data available on which actuarial estimates could be made of the fund and the contributions necessary to sustain [fol. 238] the proposed benefits. Unemployment, as it depends on business cycles, would seem hardly predictable. But the Legislature had the federal census of 1930, the investigations and tabulations of the Federal Bureau of Labor Statistics, and the data and suggestions assembled in connection with the Federal Social Security Act, besides the fund of general knowledge and the judgment which all Legislatures are supposed to possess. There were no special hearings touching the proposed law, but it had the usual constitutional delays in its passage. It was reconsidered for amendment in April, 1936. The Act is on its face somewhat tentative, in that the right to amend and repeal is expressly reserved, a delay of two years provided before benefits can be paid, and the Commission established is to get information and acquire experience which is to be made the basis of classifications and adjustment of rates after 1940.

7. The exceptions from the Act have discernible reasons which prevent them from being arbitrary. The peculiar status of agriculture and its slight need for the remedy have been above alluded to. Domestic service in homes is similar, such servants seldom being discharged in great numbers at once or left to suffer. The same is true of the employers of the near relatives mentioned in the Act. Service on ships in navigable waters, service on interstate rail-

way carriers, and for the United States and its instrumentalities are peculiarly subject to federal law, and impositions on employer and employee would run into peculiar difficulties. So also impositions on charitable institutions and their employees would burden the charities which are semi-public at best. The State and its instrumentalities are excluded for like reasons. Why solicitors and agents of insurance companies are omitted is not apparent.

[fol. 239] 8. The main classification is between employers of eight persons or more and those of less than eight. Some employers and employees are now by litigations opposing the law on the ground that it is arbitrary to include in the burdens and benefits of the law employers and their employees where there are eight employed and to exclude where there are only seven or six. No reason for the difference this made appears. It is suggested that very small payrolls would not yield much contribution nor pay to bother with. But from the employee standpoint the need of protection is not less because he works with fewer employees, and from the public standpoint the unemployment of a number of persons carries the same menace whether they formerly worked for large or small concerns. It is evident that six or seven high salaried employees would cause a much greater payroll than a dozen or fifty day-laborers. No reason is found for the inclusion alone of employers of eight or more persons; nor why less than all should be included. If a store having seven employees is competing with one having eight, it is manifest that the former can undersell the latter, and the latter must discharge one employee, or go broke and discharge all eight, equalizing wage reductions being forbidden.

9. The evidence shows that petitioners here, and many other employers of hundreds of workers each, have a record of few or no discharges except for cause for a number of years past even during the recent depression, and have no prospect of unemployment in the future; so that if the Act had been in force in the past they would have paid in many thousands of dollars each year, but their employees would have gotten almost nothing, and that the same thing will likely be true in the future. On the other hand many employments are habitually seasonal and fluctuating, unemployment being large and regularly recurrent, so that benefits in excess of contributions will be drawn and at the

expense of employers and employees of the more stable em-
[fol. 240] ployments. The pooling of funds for all employments under the Act will thus result almost certainly in making certain classes of business carry the burden of benefits to other classes. The general and indirect benefit to all business resulting from the disbursement of the benefits is not a practical off-set to this inequality. It is however also true that in a period of years every employer may meet disaster and have to curtail or cease operations, so that there is always the possibility of his employees drawing benefits above those indicated by his previous record.

10. Contributions required of employees are but premiums for an insurance protection. Contributions required of employers can hardly be called such. Employers have no direct benefit from the insurance fund. Such contentment as it may give employees, or such general improvement to business as its disbursement may cause are too indirect and vague to be measured. The direct effect of the law is to require the employer to pay about two-thirds of the premium necessary to protect the employee. It is equal to a compulsory increase by that much of the wages paid to be devoted to insurance for the employee's benefit. In the long run it might be absorbed in a general reduction of wages by force of business competition, next adverted to.

11. The business of both petitioners is interstate and in competition with others. In the coal mining business of one petitioner there is a great labor handicap in that because of geological conditions in Alabama a miner there cannot produce as much coal as in a mine say in Indiana. The burden of the Act might force the employer to reduce labor costs or go out of business. Nearly all business in the United States proceeds in competition with business in other States. Any special or other legislation burdensome [fol. 241] to business which may be adopted in one State will put the business of that State at a disadvantage in the competition. The State cannot protect itself by a tariff or otherwise curb the competitors in the other States by reason of the federal Constitution. Hence the necessity of coordination through the federal government, sought to be had in this instance by the Social Security Act.

12. The provisions of the Social Security Act did not intimidate the members of the Alabama Legislature into pass-

ing the Alabama Act, but did induce its passage by making it appear more advantageous to the State than not to pass it. The Legislature provided that if the federal Act should be held unconstitutional by the Supreme Court of the United States the Alabama Act shall become inoperative. The State of Alabama does not here complain that her freedom of legislation has been interfered with.

CONCLUSION OF LAW

1. The Court has jurisdiction, both federal and equitable.

2. The evils of unemployment are such as to be taken cognizance of under the police powers of the States and to authorize a remedy which is not forbidden by the Constitutions.

3. Compulsory insurance against unemployment though a new remedy in the United States of America is a possible one. Recognizing the troubles that have come from allowing the capitalist to hire the worker, it could be considered as a regulation, operating in future, conditioning the right to engage in such hiring. But the right to work for a wage, or to hire another, is among the fundamental liberties of the country and they cannot be arbitrarily narrowed or taken away. See Adkins vs. Children's Hospital, 261 U. S. 525. Whether the requirement of this insurance and the payments to support it be arbitrary or not depends on the state of society at the time and the urgency of the need for the regulation. Of such things the legislature is the primary judge. Several businesses, such as motorcarriage, [fol. 242] have been required to carry insurance. Marriage in Alabama could formerly be contracted only on giving a bond. We are not required in this case to give an opinion on this broad question of police power, because this legislation must fall on a narrower point.

4. If an insurance Act like this could stand up which either covered all employments (not excepted for valid reasons), or which classified employments so closely as to escape arbitrary imposition of burdens (see Mountain Timber Co. vs. Washington, 243 U. S. 219), the present Act denies due process in that the classification of employers having eight or more employees is entirely arbitrary. Whether viewed from the standpoint of employers or em-

ployees there is no reason for the distinction made, and equal protection of the law is not afforded either to employers or employees. Colgate vs. Harvey, 296 U. S. 404, 423, 425.

5. The requirement that employers pay about two-thirds of the contribution to the general fund for the direct benefit of the unemployed with no direct benefit to themselves violates the provisions of Art. I, Sec. 23, of the Alabama Constitution. Robertson vs. Collins, 218 Ala. 54.

6. The Social Security Act, supposing it to be valid, did not operate either to coerce or bribe the Alabama Legislature so as to impair the validity of their legislative action. The motives of legislators cannot at the instance of private litigants be inquired into by courts. Fletcher vs. Pock, 6 Cranch, 87, 130; 131; United States vs. Des Moines R. R. Co., 142 U. S. 545; Anglo vs. Chicago R. R. Co. 151 U. S. 17, Cooley Const. Lims. (8 Ed.), p. 379, 380.

7. The Alabama Act being disposed of because the Court finds it to be violative of the Constitution of the United States and that of Alabama, it is unnecessary for this Court to pass on the constitutionality of the Federal Act. (Tennessee Publishing Company, Petitioner, vs. American National Bank, decided by the Supreme Court of the United States, November 9th, 1936.) We make no decision and ex-
[fol. 243] press no opinion as to the constitutionality of the Federal Act.

Chamberlin, Inc., vs. Andrews, 271 N. Y. 1, affirmed by an equal division of the Supreme Court of the United States, is of no authority on the federal questions involved. Hertz vs. Woodmen, 218 U. S. 205.

Sam'l H. Sibley, Circuit Judge; Robert T. Ervin, U. S. District Judge; Charles B. Kennamer, U. S. District Judge.

[File endorsement omitted.]

[fol. 244] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF ALABAMA

GULF STATES PAPER CORPORATION, a Corporation, Plaintiff,

vs.

ALBERT A. CARMICHAEL, Individually and as Attorney General of the State of Alabama, et al., Defendants

DECREE—Filed December 15, 1936

This cause came on to be heard upon a motion for an interlocutory injunction and for a final decree before a Court composed of Honorable Samuel H. Sibley, Circuit Judge, Honorable C. B. Kennamer, District Judge, and Honorable Robert T. Ervin, District Judge, and was submitted upon the pleadings and upon the evidence introduced, and the argument of counsel for the parties. The Court having taken time to consider, and being now fully advised, it is considered and adjudged that the defendants and each of them in their individual and official capacities, be enjoined pending the final determination of this cause from enforcing against complainant the Act described in the petition and passed by the Legislature of the State of Alabama, approved September 14, 1936, as amended, and known as the Alabama Unemployment Compensation Law, by requiring contributions or reports thereunder or by exacting penalties, fines, taxes or imprisonment because thereof, and from doing any act by themselves or their agents or representatives in the enforcement of said Act. This injunction is to be effective upon the complainant filing a bond in the sum of Ten Thousand ($10,000) Dollars, conditioned as by the statute in this regard required.

And upon further consideration, and by way of final decree, in pursuance of the Findings of Fact and the Conclusions of Law filed herewith, it is considered and adjudged that the defendants and each of them in their individual [fol. 245] and official capacities, their agents and representatives, are perpetually enjoined from enforcing said Act against complainant in any way by requiring contributions, reports or otherwise, or by exacting fines, penalties or other

punishments because of a failure to comply with said Act, the said Act being held and declared to be unconstitutional and void because in conflict with the Fourteenth Amendment of the Constitution of the United States and of Article 1, Section 23, of the Constitution of Alabama.

This decree signed this December 15, 1936.

Sam'l H. Sibley, United States Circuit Judge; Robert T. Ervin, United States District Judge; Charles B. Kennamer, United States District Judge.

[File endorsement omitted.]

[fol. 246] In United States District Court

[Title omitted]

Stipulation as to Writ of Injunction—Filed January 30, 1937

It is hereby stipulated by and between counsel for Plaintiff and the Defendants in the above styled cause that the Defendants and each of them, by and through their counsel of record, accept service of the writ of injunction as ordered and decreed in the final decree in said cause of date December 15, 1936, and agree in all respects to be bound thereby until the further orders of the Court, and it is agreed that the issuance and service of any other writ or notice is hereby waived.

Albert A. Carmichael, Attorney General, State of Alabama; Chas. L. Rowe, Assistant Attorney General, State of Alabama; Peyton D. Bibb, Special Assistant of the Attorney General, State of Alabama; Nicholas E. Stallworth, First National Bank Building, Mobile, Alabama, Attorneys for [fol. 247] Appellants. Lucien D. Gardner, Jr., Birmingham, Alabama; Jos. F. Johnston, Birmingham, Alabama; Forney Johnston, Birmingham, Alabama, Solicitors for Plaintiff-Appellee. Cabaniss & Johnston, Birmingham, Alabama, of Counsel for Appellee.

[File endorsement omitted.]

[fol. 248] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed January 30, 1937

Now come the defendants, Albert A. Carmichael, individually and as Attorney General of the State of Alabama, and J. L. Kaufman, individually and as Chairman and a member of the Unemployment Compensation Commission of the State of Alabama, and Lucien C. Brown and James A. Lipscomb, each individually, and as members of said Unemployment Compensation Commission, and Bibb Graves, individually and as Governor of the State of Alabama, and feeling themselves aggrieved by the final decree of the Court entered herein, the 15th day of December, 1936, pray an appeal therefrom to the Supreme Court of the United States. The particulars wherein they consider the final decree erroneous are set forth in their assignment of errors on file and to which reference is made.

Wherefore, the premises considered, your petitioners pray that an appeal in their behalf to the Supreme Court of the United States for the correction of the errors complained of and herewith duly assigned, be allowed and granted; and that an order be had fixing the amount of bond and security to be given by these defendants as Ap-
[fol. 249] pellants and conditioned as the law directs, and they pray a reversal of said decree.

Albert A. Carmichael, Attorney General, State of Alabama; Chas. L. Rowe, Assistant Attorney General, State of Alabama; Peyton D. Bibb, Special Assistant of the Attorney General, State of Alabama; Nicholas E. Stallworth, First National Bank Building, Mobile, Alabama, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 250] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENTS OF ERROR—Filed January 30, 1937

Now come the defendants, Albert A. Carmichael, individually and as Attorney General of the State of Alabama,

and J. L. Kaufman, individually and as Chairman and a member of the Unemployment Compensation Commission of the State of Alabama, and Lucien C. Brown and James A. Lipscomb, each individually, and as members of said Unemployment Compensation Commission, and Bibb Graves, individually and as Governor of the State of Alabama, and in connection with their petition for appeal file the following assignments of error on which they will rely on their appeal to the Supreme Court of the United States from the final decision of the Three-Judge District Court entered the 15th day of December, 1936.

The Three-Judge District Court erred:

1. In not granting the defendants' motion to dismiss the bill of complaint.

2. In not dismissing the bill of complaint as prayed in defendants' motion.

3. In not acting upon the defendants' motion to dismiss [fol. 251] the bill of complaint.

4. In perpetually enjoining the defendants from enforcing the Alabama Unemployment Compensation Act against the plaintiff in any way by requiring contributions, reports or otherwise or by exacting fines, penalties or other punishments of the plaintiff because of its failure to comply with such Act.

5. In enjoining the defendants from requiring of the plaintiff the payment of the contributions and the filing of the reports required of it by the Alabama Unemployment Compensation Act.

6. In enjoining the defendants from exacting of the plaintiff the fines, penalties or other punishments provided for upon its failure to comply with the Alabama Unemployment Compensation Act.

7. In enjoining the defendants from enforcing the terms and provisions of the Alabama Unemployment Compensation Act against the plaintiff.

8. In granting an interlocutory injunction enjoining the defendants, pending the final determination of the suit, from enforcing against the plaintiff the terms, provisions and requirements of the Alabama Unemployment Compen-

sation Act by requiring of the plaintiff the contributions or reports thereunder or by exacting penalties, fines, taxes or imprisonment and from doing any act by themselves or their agents or representatives in the enforcement of said Act.

9. In holding the Alabama Unemployment Compensation Act to be unconstitutional and void because in conflict with the Fourteenth Amendment of the Constitution of the United States.

10. In holding the Alabama Unemployment Compensation Act to be unconstitutional and void because in conflict with Article 1, Section 23 of the Constitution of Alabama.

11. In holding the Alabama Unemployment Compensation Act to be unconstitutional and void as denying to the plaintiff the equal protection of the law.

12. In holding that the Alabama Unemployment Compensation Act is a denial to the plaintiff of the due process of law in that the classification of employers having eight or [fols. 252-267] more employees is entirely arbitrary.

13. In holding that the classifications of employers contained in the Alabama Unemployment Compensation Act are so arbitrary as to render the Act unconstitutional and void as a denial of due process of law to the plaintiff.

14. In holding that the plaintiff has no adequate remedy at law in the premises.

15. In not dismissing the plaintiff's bill of complaint.

16. In the rendition of the final decree in this cause filed and entered December 15, 1936.

Albert A. Carmichael, Attorney General of the State of Alabama; Chas L. Rowe, Assistant Attorney General of the State of Alabama; Peyton D. Bibb, Special Assistant of the Attorney General of the State of Alabama; Nicholas E. Stallworth, First National Bank Building, Mobile, Alabama, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 268] IN UNITED STATES DISTRICT COURT

[Title omitted]

Before the Honorables Samuel H. Sibley, Circuit Judge, and Robert T. Ervin and Chas. B. Kennamer, District Judges, Composing the Court Consisting of Three Judges under Section 380 of Title 28 of the United States Code Annotated (Judicial Code Section 266, as Amended)

ORDER ALLOWING APPEAL—Filed January 30, 1937

It appearing to the Court in the cause stated that the Defendants, Albert A. Carmichael, individually and as Attorney General of the State of Alabama, and Jacob L. Kaufman, individually and as Chairman and a member of the Unemployment Compensation Commission of the State of Alabama, and Lucien C. Brown and James A. Lipscomb, each individually, and as members of said Unemployment Compensation Commission, and Bibb Graves, individually and as Governor of the State of Alabama, have filed their petition for appeal to the Supreme Court of the United States, and have filed therewith their assignment of errors, and also their statement as to the jurisdiction of the Supreme Court of the United States as required by Rule 12 of the Supreme Court Rules, duly disclosing that the Supreme Court of the United States has jurisdiction upon appeal to review the decree in question,

It is hereby Ordered by the Court that the appeal prayed for be and the same is hereby allowed and granted to the [fols. 269-271] Supreme Court of the United States from the decree rendered in said cause on the 15th day of December, 1936, and that said Defendants give a bond with good and sufficient security in the sum of One Thousand Dollars ($1000.00). That they as Appellants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good.

Dated this 30 day of January, 1937.

Samuel H. Sibley, Circuit Judge; Robert T. Ervin, District Judge; Charles B. Kennamer, District Judge.

[File endorsement omitted.]

[fols. 272-274] Bond on Appeal for $1,000.00 approved and filed Jan. 30, 1937, omitted in printing.

[fols. 275-276] Citation in usual form showing service on Lucien D. Gardner, Jr., et al., filed Jan. 30, 1937, omitted in printing.

[fol. 277] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL—Filed January 20, 1937

The plaintiff in the above entitled case is hereby notified that the defendants appealed from the decree of the Court as rendered on the 15th day of December 1936, and that said appeal will be to the Supreme Court of the United States in accordance with the citation as issued in this case.

Albert A. Carmichael, Attorney General, State of Alabama; Chas. L. Rowe, Assistant Attorney General, State of Alabama; Peyton D. Bibb, Special Assistant of the Attorney General, of the State of Alabama; Nicholas E. Stallworth, First National Bank Building, Mobile, Alabama, Attorneys for Defendants.

[fol. 278] Service of the above notice of appeal accepted, this the 14 day of January, 1937.

Lucien D. Gardner, Jr., Birmingham, Alabama; Jos. F. Johnston, Birmingham, Alabama; Forney Johnston, Birmingham, Alabama, Attorneys for Plaintiff. Cabaniss & Johnston, Birmingham, Alabama, of Counsel for Plaintiff.

[File endorsement omitted.]

[fol. 279] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed January 30, 1937

It is hereby stipulated and agreed by and between the parties hereto that for the purposes of the appeal which

has been allowed herein to the Supreme Court of the United States, the clerk is requested to prepare and forward to the clerk of the Supreme Court of the United States a transcript of the record on appeal which shall include only the following portions of the record:

1. The bill of complaint as last amended and substituted containing application for interlocutory and final injunction filed herein on the 6th day of November, 1936. (The original bill of complaint to be omitted.)

2. The order setting the application for an interlocutory injunction down for hearing October 26, 1936 before the Honorable Samuel H. Sibley, Circuit Judge, the Honorable [fol. 280] Robert T. Ervin, District Judge, and the Honorable Charles B. Kennamer, District Judge, filed herein on the 17th day of October, 1936.

3. Acceptance of service and waiver by defendants filed October 17, 1936.

4. The order filed October 24, 1936, resetting application for preliminary injunction down for hearing October 30, 1936.

5. The order filed herein October 29, 1936 resetting application for temporary injunction down for hearing November 18, 1936.

6. The notice of the hearing on motion for interlocutory injunction to the Honorable Bibb Graves as Governor of the State of Alabama, together with the return of service of said motion returned and filed herein on the 29th day of October, 1936.

7. The defendants' motion to dismiss the plaintiff's bill of complaint as amended, filed herein on the 7th day of November, 1936, as amended by amendment thereto filed herein on the 18th day of November, 1936.

8. The order of the court executed and filed on November 9, 1936 directing service and notice in response to the prayer of the amended bill.

9. The motion to dismiss filed on behalf of Harwell G. Davis November 16, 1936.

10. The motion to dismiss filed on behalf of Thomas B. Samford on November 16, 1936.

11. Special appearance and motion on behalf of the Attorney General of the United States filed November 16, 1936. [fol. 281] 12. The motion filed on behalf of the plaintiff on November 18, 1936 together with the court's order

thereon with regard to the service and notice provided for in the order of November 9th.

13. The answer of the defendants, and affidavit verifying it, filed herein on the 18th day of November, 1936.

14. The stipulation and agreement between the plaintiff and the defendants that without waiving the plaintiff's insistence on its application for the interlocutory injunction, this cause might also be submitted for final decree on the same pleadings and proof, the same being filed herein on the 18th day of November, 1936.

15. The order of the court entered the 18th day of November, 1936, continuing the temporary restraining order, pendente lite.

16. The statement of the evidence and the evidence therein referred to under Equity Rule 75 stipulated and agreed to between the plaintiff and defendants and the order approving the same, the same being filed herein on the 30th day of January, 1937.

17. The findings of fact and conclusions of law filed by the court herein on the 15th day of December, 1936.

18. The final decree filed by the court herein on the 15th day of December, 1936.

19. Stipulation waiving issue, service and return of service of the writ of injunction to the defendants filed herein on the 30th day of January, 1937.

[fol. 282] 20. The petition for appeal filed herein on the 30th day of January, 1937.

21. The assignment of errors accompanying the petition for appeal filed herein on the 30th day of January, 1937.

22. The statement as to the jurisdiction of the Supreme Court of the United States.

23. The order allowing the appeal and fixing the bond filed herein on the 30th day of January, 1937.

24. Service of appeal papers and acceptance of service thereof.

25. The appeal bond and the approval of the same filed herein on Jan. 30, 1937, and approved on the 6 day of February, 1937.

26. The citation on appeal and acceptance of service of same filed herein on the 30th day of January, 1937.

27. The notice of appeal and acceptance of service of the same filed herein on the 30th day of January, 1937.

28. This Præcipe and the order approving the same filed herein on the 30th day of January, 1937.

This the 30th day of January, 1937.

Albert A. Carmichael, Attorney General of the State of Alabama; Chas. L. Rowe, Assistant Attorney General of the State of Alabama; Peyton D. Bibb, Special Assistant of the Attorney General of the State of Alabama; Nicholas E. Stallworth, Mobile, Alabama, Attorneys for Defendants. Lucien D. [fol. 283] Gardner, Jr., Jos. F. Johnston, Forney Johnston, Attorneys for Plaintiff.

Counsel for Appellants, defendants, having submitted the foregoing Præcipe, and the same having been approved and stipulated by counsel for Appellee, plaintiff, the said Præcipe is hereby approved and it is ordered that the clerk transmit the original narrative of proceedings herein specified to the clerk of the Supreme Court of the United States for the purposes of the appeal in the same cause.

Ordered, this the 30 day of January, 1937.

Samuel H. Sibley, United States Circuit Judge; Robert T. Ervin, United States District Judge; Charles B. Kennamer, United States District Judge.

[File endorsement omitted.]

[fol. 284] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 285] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF THE POINTS ON WHICH APPELLANTS INTEND TO RELY AND OF THE PARTS OF THE RECORD WHICH APPELLANTS THINK NECESSARY FOR THE CONSIDERATION THEREOF—Filed March 10, 1937.

The appellants intend to rely upon the contentions that the specially constituted District Court erred:

1. In not granting the defendants' motion to dismiss the bill of complaint.

2. In not dismissing the bill of complaint as prayed in defendants' motion.

3. In not acting upon the defendants' motion to dismiss the bill of complaint.

4. In perpetually enjoining the defendants from enforcing the Alabama Unemployment Compensation Act against the plaintiff in any way by requiring contributions reports or otherwise or by exacting fines, penalties or other punishments of the plaintiff because of its failure to comply with such Act.

5. In enjoining the defendants from requiring of the plaintiff the payment of the contributions and the filing of the reports required of it by the Alabama Unemployment Compensation Act.

[fol. 286] 6. In enjoining the defendants from exacting of the plaintiff the fines, penalties or other punishments provided for upon its failure to comply with the Alabama Unemployment Compensation Act.

7. In enjoining the defendants from enforcing the terms and provisions of the Alabama Unemployment Compensation Act against the plaintiff.

8. In granting an interlocutory injunction enjoining the defendants, pending the final determination of the suit, from enforcing against the plaintiff the terms, provisions and requirements of the Alabama Unemployment Compensation Act by requiring of the plaintiff the contributions or reports thereunder or by exacting penalties, fines, taxes or imprisonment and from doing any act by themselves or their agents or representatives in the enforcement of said Act.

9. In holding the Alabama Unemployment Compensation Act to be unconstitutional and void because in conflict with the Fourteenth Amendment of the Constitution of the United States.

10. In holding the Alabama Unemployment Compensation Act to be unconstitutional and void because in con-

flict with Article 1, Section 23, of the Constitution of Alabama.

11. In holding the Alabama Unemployment Compensation Act to be unconstitutional and void as denying to the plaintiff the equal protection of the law.

12. In holding that the Alabama Unemployment Compensation Act is a denial to the plaintiff of the due process of law in that the classification of employers having eight or more employees is entirely arbitrary.

13. In holding that the classifications of employers contained in the Alabama Unemployment Compensation Act are so arbitrary as to render the Act unconstitutional and void as a denial of due process of law to the plaintiff.

14. In holding that the plaintiff has no adequate remedy at law in the premises.

15. In not dismissing the plaintiff's bill of complaint.

16. In the rendition of the final decree in this cause filed and entered December 15, 1936.

[fol. 287] The appellants deem the entire record as filed to be necessary for the consideration of the contentions above enumerated.

Albert A. Carmichael, Attorney General of the State of Alabama; Chas. L. Rowe, Assistant Attorney General of the State of Alabama; Peyton D. Bibb, Special Assistant of the Attorney General of the State of Alabama; Nicholas E. Stallworth, First National Bank Building Mobile, Alabama, Attorneys for (Defendants) Appellants. Inge & Stallworth, Mobile, Alabama, of Counsel.

Service of a copy of the foregoing statement of points is hereby acknowledged on behalf of the appellee, this 30th day of January, 1937.

Lucien D. Gardner, Jr., Jos. F. Johnston, Forney Johnston, Attorneys for (Plaintiff) Appellee. Cabaniss & Johnston, First National Bank Bldg., Birmingham, Alabama.

[fol. 288] [File endorsement omitted.]

Endorsed on cover: Enter A. A. Carmichael. File No. 41,337. M. Alabama, D. C. U. S. Term No. 797. Albert A. Carmichael, Individually and as Attorney General of the State of Alabama, et al., appellants, vs. Gulf States Paper Corporation. Filed March 10, 1937. Term No. 797, O. T., 1936.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 797

ALBERT A. CARMICHAEL, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE STATE OF ALABAMA, ET AL.,
Appellants,

vs.

GULF STATES PAPER CORPORATION.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA.

STATEMENT AS TO JURISDICTION.

ALBERT A. CARMICHAEL,
Attorney General of Alabama;
CHAS. L. ROWE,
Assistant Attorney General;
PEYTON D. BIBB,
Special Assistant to the Attorney General;
NICHOLAS E. STALLWORTH,
Counsel for Appellants.

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TABLE OF CASES CITED.

Brucker v. *Fisher*, 49 F. (2d) 759	21
T. L. Smith et al. v. *Wilson et al.*, 273 U. S. 388	20
Stratton v. *St. Louis S. W. Ry. Co.*, 282 U. S. 10, 51 Sup. Ct. Rep. 8, 75 L. Ed. 135	21

STATUTES CITED.

Alabama Unemployment Compensation Law (General Acts of Alabama of 1935, page 950), as amended by Act No. 156, approved April 21, 1936, General Acts of Alabama, Special Session 1936, page 176, by Act No. 194, approved April 21, 1936, General Acts of Alabama, Special Session, 1936, page 225, and by Act No. 195, approved April 21, 1936, General Acts of Alabama, Special Session 1936, page 228	2
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IN THE

DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA

IN EQUITY.

No. 692

GULF STATES PAPER CORPORATION, A CORPORATION,
Plaintiff,

vs.

ALBERT A. CARMICHAEL, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE STATE OF ALABAMA, AND JACOB L. KAUFMAN, INDIVIDUALLY AND AS CHAIRMAN AND A MEMBER OF THE UNEMPLOYMENT COMPENSATION COMMISSION OF THE STATE OF ALABAMA, AND LUCIEN C. BROWN AND JAMES A. LIPSCOMB, EACH INDIVIDUALLY AND AS MEMBERS OF SAID UNEMPLOYMENT COMPENSATION COMMISSION,
Defendants.

BEFORE THE HONORABLES SAMUEL H. SIBLEY, CIRCUIT JUDGE AND ROBERT T. ERVIN AND CHAS. B. KENNAMER, DISTRICT JUDGES, COMPOSING THE COURT CONSISTING OF THREE JUDGES UNDER SECTION 380 OF TITLE 28 OF THE UNITED STATES CODE ANNOTATED. (JUDICIAL CODE SECTION 266 AS AMENDED.)

STATEMENT AS TO JURISDICTION.

The jurisdiction of the Supreme Court of the United States upon appeal is invoked under Sections 238 and 266

of the Judicial Code as amended by the Act of February 13, 1925, c. 229, Section 1 (43 Stat. 938) (United States Code Ann., Title 28, Sections 345 and 380). The final decree of the Three-Judge District Court was entered December 15, 1936. Application for appeal is herewith presented on the 30th day of January, 1937.

The statute of the State of Alabama, the validity of which is involved, is the Alabama Unemployment Compensation Law: General Acts of Alabama of 1935, page 950, as amended by Act No. 156, approved April 21, 1936, General Acts of Alabama, Special Session 1936, page 176; by Act No. 194, approved April 21, 1936, General Acts of Alabama, Special Session 1936, page 225, and by Act No. 195, approved April 21, 1936, General Acts of Alabama, Special Session 1936, page 228. As so amended the Alabama Unemployment Compensation Law reads, in pertinent parts, as follows:

> "SECTION 1. *Short Title.*—This Act shall be known and may be cited as the 'Unemployment Compensation Law'.
>
> "SECTION 2. *Definitions.*—The following words and phrases, as used in this Act, shall have the following meanings unless the context clearly requires otherwise:
>
> "(a) 'Benefits' means the money payable to an employee as compensation for his wage losses due to unemployment as provided in this Act.
>
> "(b) 'Commission' means the Unemployment Compensation Commission established by this Act, or its authorized representative.
>
> "(c) 'Contributions' means the money payments to the State Unemployment Compensation Fund required by this Act.
>
> "(d) Eligibility.—An employee shall be deemed 'eligible' for benefits for any given week of his partial

or total unemployment (occurring subsequent to any required waiting period) only when he is not disqualified by any provision of this Act from receiving benefits for such week of unemployment.

"(e) 'Employee' means any person employed by an employer subject to this act and in employment subject to this Act.

"(f) 'Employer' means any person, partnership, association, corporation, whether domestic or foreign, or the legal representative, trustee in bankruptcy, receiver, or trustee thereof, or the legal representative of a deceased person, who or whose agent or predecessor in interest has employed at least eight persons in employment subject to this Act within each of twenty or more calendar weeks in the year 1935 or any subsequent calendar year; provided that such employment in 1935 shall make an employer subject on January 1, 1936, and such employment in any subsequent calendar year shall make a newly subject employer subject for all purposes as of January first of the calendar year in which such employment occurs. In determining whether an employer (of any person in the state) employs enough persons to be an 'employer' subject hereto, and in determining for what contributions he is liable hereunder, he shall whenever he contracts with any contractor or subcontractor for any work which is part of his usual trade, occupation, profession, or business, be deemed to employ all persons employed by such contractor or subcontractor on such work, and he alone shall be liable for the contributions measured by wages paid to such persons for such work; except as any such contractor or subcontractor, who would in absence of the foregoing provisions be liable to pay said contributions, accepts exclusive liability for said contributions, under an agreement with such employer made pursuant to general commission rules. All persons thus employed by an employer (or any person) within the State, in all of his several places of employment maintained within the state, shall be treated as employed by a

single 'employer' for the purposes of this Act; provided, moreover, that where any person, partnership, association, corporation, whether domestic or foreign, or the legal representative, trustee in bankruptcy, receiver or trustee thereof or the legal representative of a deceased person either directly or through a holding company or otherwise, has a majority control or ownership of otherwise separate business enterprises employing persons in the state, all such enterprises shall be treated as a single 'employer' for the purposes of this Act. Any employer subject to this Act shall cease to be subject hereto only upon a written application by him after a finding by the commission that he has not within any calendar week within the last completed calendar year employed eight or more persons in employment subject hereto. Any employer (of any person within the state) not otherwise subject to this Act shall become fully subject hereto upon filing by such employer with the commission of his election to become fully subject hereto for not less than two calendar years, subject to written approval of such election by the commission.

"(g) 'Employment' means any employment in which all or the greater part of the person's work (within the continental United States) is or was customarily performed within this State, under any contract of hire, oral or written, express or implied, whether such person was hired and paid directly by the employer or through any other person employed by the employer, provided the employer had actual or constructive knowledge of such contract. Such employment shall include the person's entire employment (in all states, including the District of Columbia). In the case of all other persons employed partly in this state and partly in other states, the commission is authorized, with the approval of the Governor, to enter into reciprocal arrangements with other states as to the extent the employment of such persons shall be included under this definition. The term 'employment' shall not apply to:

"(1) Agricultural labor;

"(2) Domestic service in a private home;

"(3) Service performed as an officer, bar pilot, or member of the crew of a vessel on the navigable waters of the United States;

"(4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

"(5) Service performed in the employ of the United States Government or of an instrumentality of the United States;

"(6) Service performed in the employ of a carrier engaged in interstate commerce and subject to the Act of Congress known as The Railway Labor Act; as amended or as hereafter amended. Service performed by those engaged as solicitors or agents for Insurance Companies.

"(7) Service performed in the employ of a state, or political subdivision thereof, or an instrumentality of one or more states or political subdivisions;

"(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

"(h) 'Employment Office' means that free public employment office (operated by the state) or branch thereof nearest to the employee's place of residence or employment, unless otherwise prescribed by the commission.

"(i) An employee's 'full-time weekly wage' means the weekly earnings such employee would average from his employment if employed at the 'hourly rate

of earnings' and for the 'full-time weekly hours' applicable to such employee.

"(1) The applicable 'hourly rate of earnings' shall be determined by averaging the employee's actual earnings for at least three hundred hours of employment by his most recent employers.

"(2) An employee's 'full-time weekly hours' shall mean the standard maximum weekly hours which can lawfully be worked by the employee (in the employment in question) under any code of fair competition or under any applicable state law specifying lower maximum weekly hours or agreement. Where there is no code, law or agreement applicable, the commission shall determine the employee's full-time weekly hours by averaging his weekly hours for all calendar weeks (in at least the past three months) in which he worked thirty hours or more, or by such equitable method as the commission may by general rule prescribe for determining a full-time standard of not less than thirty weekly hours for benefit purposes. In the case of an employee who is found by the commission, at the time he becomes eligible for benefits, to be unable by reason of physical disability or by reason of continuing personal obligations (other than employment) to work half the full-time weekly hours which prevail in such establishment for full-time employees, the commission shall determine his full time weekly hours for benefit purposes by averaging his weekly hours for all weeks (in at least the past three months) in which he worked.

"(j) 'Fund' means the Unemployment Compensation Fund established by this Act, to which all contributions and from which all benefits required under this Act shall be paid.

"(k) 'Partial Unemployment'.—An employee shall be deemed 'partially unemployed' in any calendar week or partial week if he fails to earn in wages (and/or any other pay for personal services, including net

earnings from self-employment) for such week at least one dollar more than the amount of weekly benefits for total unemployment he might receive if totally unemployed and eligible.

"(l) 'Payroll' means the total amount of all wages payable by the employer to his employees, commencing with wages payable for employment occurring after the employer becomes newly subject to this Act.

"(m) 'Total Unemployment'.—An employee shall be deemed 'totally unemployed' in any calendar week in which he performs no wage-earning services whatsoever, and for which he earns no wages (and no other pay for personal services, including net earnings from self-employment), and in which he cannot reasonably return to any self-employment in which he has customarily been engaged.

"(n) 'Unemployment Administration Fund' means the Unemployment Compensation Administration Fund established by this Act.

"(o) 'Wages' means every form of remuneration for employment received by a person from his employer, whether paid directly or indirectly by the employer, including salaries, commissions, bonuses, and the reasonable money value of board, rent, housing, lodging, payments in kind, and similar advantages.

"(p) 'Waiting-period-unit' means a period (for which no benefits are payable but during which the employee is in all other respects eligible) consisting of either one week of total unemployment or two weeks of partial unemployment, required as a condition precedent to the receipt of benefits for subsequent unemployment, as prescribed in this Act.

"(q) 'Weeks' means calendar week ending at midnight Saturday, or any equivalent period approved by the Commission.

"Section 2(r). 'Week of employment' means each calendar week occurring at least one year after con-

tributions first became generally due under this Act from employers then subject hereto, within which the person in question performed any employment subject to this Act for any employer or employers subject to this Act and was not partially unemployed as defined in Section 2 (k).

"SECTION 3. *Unemployment Compensation Fund.*—(a) Fund. There is hereby created the Unemployment Compensation Fund, to be administered by the commission without liability on the part of the state beyond the amounts paid into and earned by the fund. This fund shall consist of all contributions and money paid into and received by the fund as provided by this Act, of property and securities acquired by and through the use of moneys belonging to the fund, and of interest earned upon the moneys belonging to the fund.

"(b) Withdrawals.—The fund shall be administered in trust and used solely to pay benefits, upon vouchers drawn on the fund by the commission pursuant to general commission rules and no other disbursement shall be made therefrom. Such rule shall be governed by and consistent with any applicable constitutional requirements, but the procedure prescribed by such rules shall be deemed to satisfy (and shall be in lieu of) any and all statutory requirements (for specific appropriation or other formal release by State officers of State moneys prior to their expenditure which might otherwise be applicable to withdrawals from the Fund.

"(c) Treasurer.—The commission shall designate a treasurer of the fund, who shall pay all vouchers duly drawn upon the fund, in such manner as the commission may prescribe. He shall have custody of all moneys belonging to the fund and not otherwise held or deposited or invested pursuant to this Act. The treasurer shall give bond conditioned on the faithful performance of his duties as treasurer of the fund, in a form prescribed by statute or approved by the attorney general, and in an amount specified by the commission and approved by the governor. All pre-

miums upon bonds required pursuant to this section when furnished by an authorized surety company or by a duly constituted governmental bonding fund shall be paid from the unemployment administration fund. The treasurer shall deposit and/or invest the fund under the supervision and control of the commission, subject to the provisions of this Act.

"(d) Deposit.—All contributions paid under this Act shall upon collection be deposited in or invested in the obligations of the 'Unemployment Trust Fund' of the United States Government or its authorized agent, so long as said trust fund exists, notwithstanding any other statutory provision to the contrary. The commission shall requisition from the Unemployment Trust Fund necessary amounts from time to time.

"SECTION 4. *Contributions.*—(a) Payment. On and after the first day of January, 1936, contributions shall accrue and become payable by each employer then subject to this act. Thereafter contributions shall accrue and become payable by any new employer on and after the date on which he becomes newly subject to this act. The contributions required hereunder shall be paid by each employer in such manner and at such times as the commission may prescribe.

"(b) Rates of Contributions.—Every employer shall pay contributions equal to the following percentages of the total wages payable (regardless of the time of payment) with respect to employment by him during such month:

"(1) With respect to employment during the calendar year 1936 the rate shall be ninety-one-hundredths (.90) of one per centum;

"(2) With respect to employment during the calendar year 1937 the rate shall be one and eighty one-hundredths (1.80) of per centum;

"(3) With respect to employment during the calendar year 1938 and thereafter the rate shall be two and seventy one-hundredths (2.70) of per centum.

"(c) Future Rates, Based on Benefit Experience.—Based on the actual contribution and benefit experience of employers under this act, the commission shall (in the year 1941 and in each calendar year thereafter) classify employers in accordance with said experience; and shall determine for each employer the rate of contribution which shall apply to him throughout the calendar year, pursuant to said experience and classification. The minimum contributions thus payable to the fund shall in no case amount to less than one and one-half (1½%) per centum or more than four (4%) per centum on the employer's payroll, and the average contribution rate of all employers shall be approximately three (3%) per centum (on payroll) for any calendar year. An employer's contribution rate shall in no case be reduced until there has been at least three calendar years throughout which his employees received or could have received benefits when and if unemployed and eligible. The commission shall investigate and classify industries, employers, and/or occupations with respect to the degree of unemployment hazard in each, taking due account of any relevant and measurable factors, and shall have power to apply any form of classification or rating system which in its judgment is best calculated to rate individually the unemployment risk most equitably for each employer or group of employers and to encourage the stabilization of employment. The general basis of classification proposed to be used for any calendar year shall be subject to discussion, adoption and publication in the manner prescribed in this act for all general commission rules.

"(d) 'Contributions by Employees'.—Each employee shall contribute to the fund one per centum of his wages earned after May 1st, 1936 and after the date as of which the conditions determining whether or not his employer is or will be subject to the Act have been fulfilled. Each employer shall be responsible for withholding such contributions from the wages of his employees, shall show such deduction on his payroll and records, and shall transmit all such contributions to the fund pursuant to general Commission rules.

"SECTION 5. *Benefits.* — (a) Payment of Benefits. After contributions have been due under this act for two years, benefits shall become payable from the fund to any employee who thereafter is or becomes unemployed and eligible for benefits, based on his weeks of employment as defined in this act, and shall be paid through the employment offices at such times and in such manner as the commission may prescribe.

"(b) Weekly Benefits for Total Unemployment.— An employee totally unemployed and eligible in any week shall be paid benefits (computed to the nearest half-dollar) at the rate of fifty per centum of his full-time weekly wage with maximum benefits of $15.00 per week.

"(c) Weekly Benefits for Partial Unemployment.— An employee partially unemployed and eligible in any week shall be paid sufficient benefits so that his week's wages (and/or any other pay for personal services, including net-earnings from self-employment and his benefits combined will be two dollars more than the weekly benefit to which he would be entitled if totally unemployed in that week).

"(d) One-to-Four Ratio of Benefits to Employment. —The aggregate amount of benefits an employee may at any time receive shall be limited by the number of his past weeks of employment against which benefits have not yet been charged hereunder. Each employee's benefits shall be thus charged against his most recent weeks of employment available for this purpose. Each employee shall receive benefits in the ratio of one-quarter week of total unemployment benefits (or an equivalent amount, as determined by general commission rules, of benefits for partial unemployment or for partial and total unemployment combined) to each week of employment of such employee occurring within the 104 weeks preceding the close of the employee's most recent week of employment.

"(e) Maximum Weeks of Benefits in Any Year.— Benefits shall be paid each employee for the weeks dur-

ing which he is totally or partially unemployed and eligible for benefits, based on his past weeks of employment; but not more than sixteen (16) weeks of total unemployment benefits (or an equivalent total amount, as determined by commission rules, of benefits for partial unemployment or for partial and total unemployment combined) shall be paid any employee for his weeks of unemployment occurring within any fifty-two (52) consecutive weeks.

"(f) Additional Benefits (One-to-Twenty Ratio).—An eligible employee who has received the maximum benefits permitted under subsection (c) shall receive additional benefits, in the ratio of one week of total unemployment benefit (or its equivalent) to each unit of twenty aggregate weeks of employment occurring within the 260 weeks preceding the close of the employee's most recent week of employment, and against which benefits have not already been charged under this act. Such additional benefits shall be charged against the employee's earliest weeks of employment available for this purpose.

"SECTION 6. Benefits Eligibility Conditions.—(a) Employment Requirement. An employee shall be deemed eligible for benefits for any given week of his unemployment only if he has either

"(1) accumulated 40 weeks of employment subject hereto within the 104 weeks immediately preceding the date of his application for benefits, or

"(2) accumulated 26 weeks of employment subject hereto within the 52 weeks immediately preceding the date of his application for benefits.

"(b) Availability and Registration for Work.—An employee shall not be eligible for benefits in any week of his partial or total unemployment unless in such week he is physically able to work and available for work, whenever duly called for work through the employment office. To prove such availability for work, every employee partially or totally unemployed shall

register for work and shall file claim for benefits at the employment office, within such time limits and with such frequency and in such manner (in person or in writing) as the commission may by general rule prescribe. No employee shall be eligible for benefits for any week in which he fails without good cause to comply with such registration and filing requirements. A copy of the commission's rules covering such requirements shall be furnished by it to each employer who shall inform his employees of the terms thereof when they become unemployed.

"(c) Waiting Period.—Benefits shall be payable to an employee only for his weeks of unemployment occurring subsequent to a 'waiting period' whose duration shall in each case be determined as follows: An aggregate of three (3) waiting-period-units shall be required of the employee within the fifty-two (52) weeks preceding the start of any given week of unemployment. There shall not be counted toward an employee's required waiting period or periods any week of total or partial unemployment in which he is ineligible for benefits under subsection (b), (d), (e), (f), (g) of this section.

"(d) During Trade Disputes.—An employee shall not be eligible for benefits for any week in which his total or partial unemployment is directly due to a labor dispute still in active progress in the establishment in which he is or was last employed.

"(e) Voluntary Leaving.—An employee who has left his employment voluntarily without good cause connected with such employment shall be ineligible for benefits for the week in which such leaving occurred and for the three next following weeks.

"(f) Discharge for Misconduct.—An employee who has been discharged for proved misconduct connected with his employment shall thereby become ineligible for benefits for the week in which such discharge occurred and for not less than the three nor more than six next

following weeks, as determined by the commission in each individual case.

"(g) Refusal of Suitable Employment.—If an otherwise eligible employee fails, without good cause, either to apply for suitable employment when notified by the employment office, or to accept suitable employment when offered him, he shall thereby become ineligible for benefits for the week in which such failure occurred and for the three next following weeks. 'Suitable employment' shall mean any employment for which the employee in question is reasonably fitted, which is located within a reasonable distance of his residence or last employment, and which is not detrimental to his health, safety or morals. No employment shall be deemed suitable, and benefits shall not be denied under this act to any otherwise eligible employee for refusing to accept new work, under any of the following conditions:

"(1) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

"(2) if the wages, hours, and other conditions of the work offered are substantially less favorable to the employee than those prevailing for similar work in the locality;

"(3) if acceptance of such employment would either require the employee to join a company union or would interfere with his joining or retaining membership in any bona fide labor organization."

Sections 9 and 10 provided for the creation of the Alabama Unemployment Compensation Commission, which is authorized and directed to administer the Act and to adopt such general rules and regulations as might be necessary to the enforcement of its provisions.

The plaintiff, Gulf States Paper Corporation, a corporation engaged in the business of operating a plant for the manufacture of Kraft paper and products thereof for mar-

ket and employing more than eight persons in the State of Alabama, filed its bill of complaint against the defendants, who are the officials of the State of Alabama charged with the administration and enforcement of the Alabama Unemployment Compensation Law. The bill prayed, and the plaintiff made application, for an interlocutory injunction suspending and restraining the enforcement, operation or execution of the said Alabama Unemployment Compensation Law by restraining the actions of the defendants and each of them from the enforcement or execution of said Law insofar as said Law imposes upon the plaintiff the obligation of paying the contributions required of it by the terms of the Law, and insofar as the said Law requires the plaintiff to deduct from the wages of its employees and to pay to the Commission the amount of the contributions required by the Law from the plaintiff's employees. The bill further prayed that upon final hearing a permanent injunction of like effect be issued and granted against the defendants.

The application for an interlocutory injunction, as well as the prayer for a permanent injunction, was based upon the alleged unconstitutionality of the said Alabama Unemployment Compensation Law. The plaintiff, by its bill of complaint, contended that the effect of the said Law in requiring contributions to be paid by it and its employees to be used for the purposes set out in the Law, deprived the plaintiff of its property without due process of law, unlawfully interfered with the plaintiff's freedom of contract, and that the provisions of the Law were so arbitrary, unreasonable and capricious as to deny to the plaintiff the equal protection of the law, all within the meaning of the Fourteenth Amendment to the Constitution of the United States.

Upon presentation of the bill, the District Judge granted a temporary restraining order which was by appropriate

orders maintained in force until the convening of the Three-Judge Court, who continued it in effect until the final decree was rendered.

The facts alleged and admitted of record show that the plaintiff is, and during the whole of 1936 and for years previously has been, engaged in the business of operating a plant for the manufacture of Kraft paper and products thereof for market in the State of Alabama in intrastate commerce, and that it employs and has employed more than eight persons therein, and that its business is not seasonable in nature.

The defendants by their answer and on the trial insisted that the enactment of the Alabama Unemployment Compensation Law was a proper exercise of the police power of the State of Alabama, that it was neither arbitrary, unreasonable nor capricious, and that it did not deny the plaintiff the equal protection of the laws nor deprive the plaintiff of its property without due process of law nor did it interfere with the plaintiff's right of contract.

There were other collateral issues involved in the suit under the Constitution of the State of Alabama and otherwise not necessary to be stated as a basis for the jurisdiction of the Supreme Court of the United States.

The application for the interlocutory injunction was presented to the Hon. Charles B. Kennamer, Judge of the District Court of the United States for the Middle District of Alabama, who called to his assistance to hear and determine the application of plaintiff for an interlocutory injunction in the premises, two other Judges as required by Section 266 of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, Section 1 (United States Code, Ann., Title 28, Section 380) viz: The Hon. Samuel H. Sibley, Judge of the United States Circuit Court of Appeals for the Fifth Judicial Circuit, and the Hon. Robert T. Er-

vin, Judge of the District Court of the United States for the Southern District of Alabama.

The cause was submitted on the plaintiff's application for an interlocutory injunction as prayed in its bill of complaint, upon the other pleadings filed in said cause and upon stipulation of counsel and the evidence introduced by each of the parties. Without the plaintiff in any way waiving its insistence on its application for an interlocutory injunction, the cause was at the same time also submitted for final decree upon the same pleadings and upon the same evidence introduced by the parties upon the hearing of the plaintiff's application for an interlocutory injunction.

Upon final decree the Three-Judge District Court by unanimous opinion held that the said Alabama Unemployment Compensation Law was unconstitutional and void, and on December 15, 1936, filed in this cause its decree as follows:

> "This cause came on to be heard upon a motion for an interlocutory injunction and for a final decree before a Court composed of Honorable Samuel H. Sibley, Circuit Judge, Honorable C. B. Kennamer, District Judge, and Honorable Robert T. Ervin, District Judge, and was submitted upon the pleadings and upon the evidence introduced, and the argument of counsel for the parties. The Court having taken time to consider, and being now fully advised, it is considered and adjudged that the defendants and each of them, in their individual and official capacities, be enjoined pending the final determination of this cause from enforcing against complainant the Act described in the petition and passed by the Legislature of the State of Alabama, approved September 14, 1935, as amended, and known as The Alabama Unemployment Compensation Law, by requiring contributions or reports thereunder or by exacting penalties, fines, taxes or imprisonment because thereof, and from doing any act by themselves

or their agents or representatives in the enforcement of said Act. This injunction is to be effective upon the complainant filing a bond in the sum of Ten Thousand ($10,000) Dollars, Conditioned as by the statute in this regard required.

"And upon further consideration, and by way of final decree, in pursuance of the Findings of Fact and the Conclusions of Law filed herewith, it is considered and adjudged that the defendants and each of them in their individual and official capacities, their agents and representatives, are perpetually enjoined from enforcing said Act against complainant in any way by requiring contributions, reports or otherwise, or by exacting fines, penalties or other punishments because of a failure to comply with said Act, the said Act being held and declared to be unconstitutional and void because in conflict with the Fourteenth Amendment of the Constitution of the United States and of Article 1, Section 23, of the Constitution of Alabama.

"This decree signed this December 15, 1936."

Upon the filing of its final decree the Three-Judge District Court also filed its conclusions of law as follows:

"Conclusion of Law

"1. The Court has jurisdiction, both federal and equitable.

"2. The evils of unemployment are such as to be taken cognizance of under the police powers of the States and to authorize a remedy which is not forbidden by the Constitutions.

"3. Compulsory insurance against unemployment though a new remedy in the United States of America is a possible one. Recognizing the troubles that have come from allowing the capitalist to hire the worker, it could be considered as a regulation, operating in future, conditioning the right to engage in such hiring. But the right to work for a wage, or to hire another,

is among the fundamental liberties of the country and they cannot be arbitrarily narrowed or taken away. See Adkins vs. Children's Hospital, 261 U. S. 525. Whether the requirement of this insurance and the payments to support it be arbitrary or not depends on the state of society at the time and the urgency of the need for the regulation. Of such things the legislature is the primary judge. Several businesses, such as motor-carriage, have been required to carry insurance. Marriage in Alabama could formerly be contracted only on giving a bond. We are not required in this case to give an opinion on this broad question of police power, because this legislation must fall on a narrower point.

"4. If an insurance Act like this could stand up which either covered all employments (not excepted for valid reasons), or which classified employments so closely as to escape arbitrary imposition of burdens, (see Mountain Timber Co. vs. Washington, 243 U. S. 219), the present Act denies due process in that the classification of employers having eight or more employees is entirely arbitrary. Whether viewed from the standpoint of employers or employees there is no reason for the distinction made, and equal protection of the law is not afforded either to employers or employees. Colgate vs. Harvey, 296 U. S. 404, 423, 425.

"5. The requirement that employers pay about two-thirds of the contribution to the general fund for the direct benefit of the unemployed with no direct benefit to themselves violates the provisions of Art. I, Sec. 23, of the Alabama Constitution. Robertson vs. Collins, 218 Ala. 54.

"6. The Social Security Act, supposing it to be valid, did not operate either to coerce or bribe the Alabama Legislature so as to impair the validity of their legislative action. The motives of legislators cannot at the instance of private litigants be inquired into by courts. Fletcher vs. Peck, 6 Cranch. 87, 130, 131; United States

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Supreme Court of the United States

OCTOBER TERM, 1936

No. 797

ALBERT A. CARMICHAEL, as Attorney General of the State of Alabama, et al,

Appellants,

vs.

GULF STATES PAPER CORPORATION

BRIEF FOR APPELLEE

Jos. F. Johnston
Forney Johnston
Counsel for Appellee

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Supreme Court of the United States

OCTOBER TERM, 1936

No. 797

ALBERT A. CARMICHAEL, as Attorney General of the State of Alabama, et al,

Appellants,

vs.

GULF STATES PAPER CORPORATION

OPINION AND DECISION BELOW

This cause was decided below on final decree by a court sitting in the District Court of the United States for the Middle District of Alabama, assembled in accordance with Section 266 of the Judicial Code, composed of Circuit Judge S. H. Sibley and District Judges R. T. Ervin and C. B. Kennamer.

The opinion below consists of a statement, findings of fact and conclusions of law set out in the record, not yet reported.

The bill of complaint sought and plaintiff obtained temporary injunction restraining the enforcement of the Alabama Unemployment Compensation Law.* By final decree the

*Approved Sept. 14, 1935, Gen. Acts 1935, p. 950. Thrice amended April 21, 1936; Acts 1936, pp. 176, 225, 228. Amended Feb., 1937.

We have not yet (April 3) received appellants' brief, but understand that the Act will be printed in full therein.

injunction was made final, "the said Act being held and declared to be unconstitutional and void because in conflict with the Fourteenth Amendment of the Constitution of the United States and with Article I, Section 23 of the Constitution of Alabama." (R. p. 184). The Court (conclusion of Law No. 7, (R. p. 183) asserted that it was therefore "unnecessary * * * to pass on the constitutionality of the Federal Act."

THE QUESTIONS AND STATUTES INVOLVED

The two questions necessarily involved on this appeal are

(1) The question whether the Alabama Unemployment Compensation Law is *valid* as applied to the appellee (plaintiff), Gulf States Paper Corporation, under the Fourteenth Amendment to the Federal Constitution, and

(2) The question whether the Alabama act is *operative* in view of its express and intrinsic dependence upon the validity of the unemployment compensation provisions of the Federal Social Security Act*, which are asserted to be invalid because of their violation of the Federal Constitution.

The District Court below had jurisdiction over the entire controversy as to the validity and enforcement of the State Act because of the federal (three-judge) question presented by the prayer for and grant of temporary injunction and because of the diversity of citizenship and amount involved. Plaintiff had the right to include in the suit challenging the enforcement of the State statute as being void under the Federal constitution any additional ground, federal or non-federal or derivative, including the contention that the statute by its own terms was self-destruc-

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*Act Public No. 271, 74th Cong., H. R. 7260, approved August 14th, 1935, 49 Stat. 620, 626, 639; 42 U.S.C.A. §§501-503, 1101-1110.

tive as being expressly and intrinsically conditioned upon an invalid Federal Act and scheme. All such questions, both federal and local, were properly before the three-judge court and are here on appeal.* They were, irrespective of any federal tax feature, the *actual controversy* before the court below—and here.

THE STATE SUPREME COURT HAS SETTLED THE QUESTIONS ARISING UNDER THE STATE CONSTITUTION

In a State court case decided March 18, 1937 (*Beeland Wholesale Company v. Carmichael*, MSS. printed in full in appendix to Brief for Appellants therein), commented upon below, the Supreme Court of Alabama held the Alabama Act not to be violative of the Constitution of Alabama or of the United States. Application for rehearing has been made and the certificate of affirmance recalled or stayed; but in view of the decision no argument is made here by appellee *based on the State Constitution.*

We accept fully that opinion's express and implied interpretations of the Alabama Act and of the Alabama Constitution, and confine the discussion to the two basic questions stated above, both related to the application of the Federal Constitution.

The opinion of the Alabama Supreme Court has a direct and important bearing because of its holding that the Alabama Act is not only dependent upon the Federal Act as a legislative condition but is organically and necessarily tied into the Federal Act "to have an effective field of beneficial oper-

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*Siler v. L. & N. R. R., 213 U. S. 175, 191;
L. & N. R. R. Co. v. Garrett, 231 U. S. 299;
Van Dyke v. Geary, 244 U. S. 39.

ation for the public welfare," forms a part of a nationwide economic scheme provided for by the Federal Act, without which it could not have the influence on economy which is the foundation for its existence.

We take this holding, quoted in the margin,* to be binding upon this Court as to the nature and dominant intent of the Alabama Act and that, so far as the State of Alabama is concerned the Federal Act is regarded as the *causa sine qua non* of the State law.

Since, accordingly, that court has asserted unconditionally that "The Alabama Act is dependent upon the constitutionality of the Federal Act" we omit elaboration here of the inextricable dependence of the Alabama Act upon the validity

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*Opinion of Supreme Court of Alabama in Beeland Wholesale Company v. Carmichael, MSS (March 18, 1937):

"The Alabama Act ties into it (the Federal Social Security Act), and forms a part of a nationwide economic scheme provided for by the Federal Act. Unless it is tied up to such a widespread program, it probably could not have the influence on economy which is the foundation for its existence. * * * Expressly made to depend upon a decision of the United States Supreme Court upholding the Act, in reality it is merely dependent upon its constitutionality. Reference is made to the decision of the United States Supreme Court because that is the only court which has the authority effectually to declare it unconstitutional.* * *

"It is necessary for us to lay down the law of this suit as we understand it, and since the Alabama Act is dependent upon the constitutionality of the Federal Act, it is necessary to express our opinion as to that insofar as it affects its unemployment features, since the United States Supreme Court has not acted on it." * * *

"It is evident that the State does not wish to embark in the 'social security' business except in cooperation with the Federal Government. It is also manifest that the life of the Alabama Act is dependent on what the United States Supreme Court may hold on the validity of the Federal Act * * * its life and existence is dependent upon the result of the holding of the United States Supreme Court as to the validity of the Federal Act * * *"—Concurring opinion by Chief Justice Anderson.

of Title III, which furnishes the sole means of administration, and Title IX, which supplies the organic and indispensable bony structure and foundation for the State Act.

We argue below and there state the facts as to the dual constitutional infirmity in making a State Act dependent upon and involving a contractual relation with the Federal Government under a Federal Act (delegation and unlawful assumption of state sovereignty) or dependent upon the ultimate conclusion unknowable in advance which this Court or any other court will announce as to the validity of the Federal Act (thus constituting legislative uncertainty so far as the Alabama Act is concerned: *International Harvester Co. v. Kentucky,* 234 U. S. 216)*; discussed *infra.*

This interdependence between the Federal and State statutes, resting in substantial respects on a contractual basis, relating to the police and tax powers of the State, is an aspect of the case omitted from consideration by the State Court, perhaps because of the impression that all basic questions of this grave Federal nature, involving the integrity of the dual system, should await the final analysis of this Court.

STATEMENT OF THE CASE

The Nature of Plaintiff's (Appellee's) Business

The facts as related to plantiff (appellee) are not in controversy, resting upon the undisputed factual averments of the bill and more detailed supporting averments as to plaintiff

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*Chief Justice Anderson in the opinion quoted asserted that a decision as to the validity of the Federal Act (and hence the existence of the State Act) would be "speculative."

found in the affidavit of its Secretary, H. D. Warner* (R., p. 114).

Plaintiff is a manufacturer of kraft paper, located at Tuscaloosa, Alabama. It began operations in 1928 and has, with nominal interruption, been continuously operated throughout the depression, with an increasing personnel and no prospect ahead of appreciable exits from its employment except such as may be due to the volition of its employees. Plaintiff employs about 800 employes, including salaried central office workers and plant workers employed both on a salary and on a wage basis.

Its annual payroll is over $800,000. The direct (employer) tax on plaintiff under the Alabama Act will range from $8541.70 for 1936, being at the rate of 9/10 of 1%, to an estimated $25,843.06 (2.7%), *on the basis of the present personnel,* for 1938, 1939 and 1940, in addition to a flat 1% which plaintiff must withhold from all salaries and wages. After 1941 plaintiff stands the chance of reducing the employer tax to a minimum of 1.5%, or being taxed as high as 4%, according to the sole discretion of the Commission, with no statutory test or measure to guide its discretion in fixing the tax and no method prescribed for reviewing it. Ala. Act, Section 4.

Until 1941 the rate of the employer tax is on an annually increasing scale, being for each year until 1941 90% of the Federal payroll tax levied under Sec. 901 of the Federal Act,

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*To facilitate submission for final decree in this and the companion case before the three-judge court (on appeal here, subnom., *Carmichael v. Southern Coal & Coke Company*, No. 724), the plaintiffs and defendants in the two cases (here Nos. 724 and 797) by agreement adopted as evidence the same affidavits, in addition to the averments of the respective verified bills and answers in so far as they averred facts.

that is, the exact amount of the credit on the Federal tax allowed by Sec. 902 of the Federal Act.

The annual cost of complying with the statistical and accounting requirements of the tax is not less than $2,000 for employers of several hundred employes (Affidavit of Childers, R. p. 141.) Here there are eight hundred.

Before the State Act begins to function by the distribution of benefits to unemployed persons (deferred for two years by the Act in response to that condition in the Federal Act), there will be exacted from plaintiff the sum of not less than $51,895.24, plus the cost of administration, all of which is to be paid over, meanwhile, to the Federal treasury for its use as free assets and without any right of withdrawal by the State, even if it should desire to abandon the scheme either as to the employer or employe contribution or in its entirety.

The tax for the single objective of this Act (unemployment insurance), never before a subject of State taxation, is shown to approximate, for a representative employer, 46% of its total taxes for the support of the state, county and city, and 117% of its total taxes for the support of the national government (Affidavit of Childers, R. p. 144).

In short, it is shown on this record that by an Act adopted without public hearing, previous public discussion or available economic data, and in response to a Federal Act, as now conclusively asserted by the Alabama Court, the service of insurance of other people's ex-employes, has become a tax burden of plaintiff greater than the burden for the support of any single major State function, education, public health, administration of justice, police protection, highways and greater than the tax obligation for the support of all functions of the Federal government combined.

So far as direct or perceptible or special benefits to this plaintiff are concerned, the facts make it indisputable that they are none or negligible.

This is shown to be true as to plaintiff (a) both as an employer of wage and salaried workers in Alabama, since no distribution is ever to be made to any employed person and none (or at most, a nominal possibility) is to be anticipated for plaintiff's ex-employes of the distant future; (b) it is also true as to plaintiff as a member of the general public of Alabama expected to benefit from the theory of improved purchasing power by unemployed persons. Not more than 5% of plaintiff's product is marketed in Alabama. If it be assumed that the total exaction paid by Alabama employers, including plaintiff, is hereafter reclaimed from the Federal treasury and filters back into local trade, the direct benefit to plaintiff, in the constitutional sense of offsetting benefits, is remote and imperceptible, and may be dropped from consideration.

The relation of plaintiff to present and prospective exits of its employes into the ranks of involuntary unemployed is thus further summarized, without dispute:

> "There is no present prospect in the operation of the business of Gulf States Paper Corporation of stoppages of operation or of any substantial curtailment of employee personnel."—Affidavit of Warner, R., p. 117).

SUMMARY OF ARGUMENT

A summary of the argument appears in the narrative headings taken from the text which are collected in the index. In order to avoid repetition that summary is not restated at this point.

BRIEF AND ARGUMENT

PART I.

THE ALABAMA LAW IS VIOLATIVE OF THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE FOURTEENTH AMENDMENT

(a)

The exaction takes money from one arbitrarily selected group for the benefit of another.

The Supreme Court of Alabama holds in the *Beeland Case* that improvement of the purchasing power of the unployed by direct public aid, is a public objective within the police power of the State—and is therefore not subject to the bar of Section 23 of the State Constitution.*

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*Section 23 of the Constitution of 1901 provides:

"23. That the exercise of the right of eminent domain shall never be abridged nor so construed as to prevent the legislature from taking the property and franchises of incorporated companies, and subjecting them to public use in the same manner in which the property and franchises of individuals are taken and subjected; but private property shall not be taken for, or applied to public use, unless just compensation be first made therefor; nor shall private property be taken for private use, or for the use of corporations, other than municipal, without the consent of the owner; provided, however, the legislature may by law secure to persons or corporations the right of way over the lands of other persons or corporations, and by general laws provide for and regulate the exercise by persons and corporations of the rights herein reserved; but just compensation shall, in all cases, be first made to the owner; *and, provided, that the right of eminent domain shall not be so construed as to allow taxation or forced subscription for the benefit of railroads or any other kind of corporations, other than municipal, or for the benefit of any individual or association.*

The question remains, accordingly, whether the aid of some of the unemployed is primarily public in character or is merely money taken from a group of selected employers for the direct benefit, beginning in 1938, of an unknown and limited group of unemployed persons who happen to have worked last for one of the taxed group; and if public in character whether this direct expropriation is consistent with the 14th Amendment; in short, whether any specially selected tax group, however rationally selected from the standpoint of revenue production, can directly be made to bear the sole burden of unemployment relief declared by the Alabama Court to be a statewide public purpose in Alabama.

First of all, the tax, which never under any circumstances reaches the treasury, has been conclusively asserted by the Alabama Court to be not a revenue measure but a means for making effective a police regulation for the benefit of the State at large through aid to the unemployed.

The opinion of the Alabama Court in the group of cases herein referred to as the *Beeland Case** asserts that the levy is a tax, *earmarked for a certain police purpose;* and that the tax "must square with due process and equality."

> "The tax we are dealing with now, the State tax, is laid for a definite purpose and the amount collected is to be put in trust to be used for no other purpose. The tax levied cannot be separated from the purpose to be accomplished, and the resulting benefits to the employer class generally."—Opinion, *Beeland Case.*

**Beeland Wholesale Company v. Kaufman,* No. 198;
Talladega Ice & Storage Company v. Carmichael, No. 197;
West Point Mfg. Company v. Carmichael, No. 200;
Alpha Portland Cement Company v. Carmichael, No. 201;
P. O. Adams v. Dwight Manufacturing Company, No. 436;
Hubert Killian v. Gulf States Steel Company, No. 437.

This is supplemented by a conclusion that the tax is in fact and intent not a revenue measure at all but a police or benefit exaction in furtherance of the police power.*

Being not a revenue measure or tax but a police exaction, taking money directly from one segregated group for the immediate benefit of another, the scheme is to be subjected to the test of the Fourteenth Amendment applicable to extraordinary legislation of that character and not solely to the test of tax classification permitted in levying excise taxes for the general treasury.

The scheme must stand trial before the Constitution both as a tax and as a police regulation.

It is our contention that the scheme, however construed, is a shocking violation of fair play, carries implications that threaten a republican form of government, and as such is violative of the due process and equal protection clauses of the 14th Amendment.

If any accepted tax group, such as utilities, or manufacturers, or druggists, which may concededly be classified for excise taxation or exemption without offense to the 14th Amendment, may also, *by reason of that fact alone*, be subjected to the direct burden of any conceivable public aid measure, such as relief of indigency or relating to any other function for which the general public is in fact as much responsible as the taxed group, then we are at the end of equal protection of the law and of constitutional government.

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*"It is also insisted that the passage of the Act violated Section 70, Constitution, in that it is an Act to raise revenue and originated in the Senate instead of the House as that section requires. But when an act has for its main purpose provision for the general welfare by enacting a scheme within the State's police power, it is not one to raise revenue, though it does so as an incident to such scheme."—*ib.*

(b)

The doctrine of off-setting benefits does not sustain the exaction levied upon Appellee and employers similarly situated or justify their classification for the support of unemployment relief.

The levy of an exaction of the nature here involved must rest either upon the doctrine of off-setting benefits conferred in the exercise of the police power or upon reasonable responsibility of the subject of the exaction for the evil sought to be remedied by the taking of the money.

First, as to the question of off-setting benefits. In this case, there is no finding of such benefits by the State court, or by the Court below. There have been no legislative hearings or reports. There are no statutory findings or recitals. Certainly there is no judicial knowledge in this Court, beyond the local information of the Supreme Court of Alabama, to the effect that in Alabama special and peculiar benefits will accrue to the employers taxed from the creation of the fund.

Any such consequence is denied here by the verified bill, accepted as evidence, by proof and by the findings.

The Supreme Court of Alabama has not made any pretense that the employers taxed by this Act are, in any remote or constitutional sense whatever, responsible for unemployment in general or for prospective unemployment or indigency of unemployed in 1938 or thereafter, either as to their own former employes or former employes of the other, remote, unknown and unrelated employers pooled by the Act.

In sustaining the Act, the Alabama Court ignores the constitutional necessity that there be some inherent, peculiar or natural duty, benefit, relation, responsibility, obligation

or menace before it can be reduced to final legislative judgment in the form of a direct regulatory tax in favor of a supposed beneficiary of the duty or object of the menace.

The Alabama Court disclaims in the *Beeland Case* any rationale for this tax other than the unrelated conclusions

(a) that increased purchasing power of a portion of the unemployed on a state wide basis (not confined to a single industry as, says the court, was the pension fund in *Railroad Retirement Board v. Alton R. R.*) is a matter of public concern; and

(b) that an excise tax can be levied upon employment.

This omits from consideration the heart of the attack upon the statute, that appellee and the selected employers taxed have no more constitutional responsibility for unemployment than the employers, citizens, and businesses not taxed; will not benefit and are not intended to benefit from the exaction any more than the persons not taxed; and can not fairly be made to stand the cost of "eradicating an evil" which, to the extent not insoluble, is the fault of government itself or of society.

The group taxed, consisting of selected employers having at present in their employ less than 27% of the salaried and wage workers of the State,* and the future unknown group of ex-employes to be given relief beginning in 1938, have no such relation, as between the members of the employer group on the one hand and the future unemployed beneficiaries on the other, as to justify public regulation of the relationship between the groups by compelling the one to make provision

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*R., p. 75, estimated at from 20%-30% by the Federal Social Security Board, R., p. 120, 121.

to support the other for the general welfare. We discuss under separate heading below the arbitrary character of the 8-worker 20-week classification of the taxed group.

Appellee contends that this direct compulsion is arbitrary in every phase and goes far beyond the violation of due process determined in *Railroad Retirement Board v. Alton R. R.*, 295 U. S. 330.

The basis of the Alabama Court's distinction of that case is, of itself alone, sufficient to condemn the scheme here as an arbitrary action. The Alabama Court asserts that in the *Alton Case* the purpose of the compulsory pension plan was not to "stabilize industry or the business of railroads"; that the pensioners did not occupy such relation to the economic fabric as that "to give them (the pensioners) purchasing power, would * * * affect the business of the railroads."

The distinction is without reason. This remote benefit, from expenditures filtering back from the public, affords no foothold for the exaction, for it is stripped absolutely of any off-setting benefit in a constitutional sense. The Alabama plan is obviously more remote both as to benefit and regulatory responsibility than was the plan for a pool retirement system adversed in the *Alton Case*.

In that case a single homogeneous industry was regulated by the pension tax. Here the regulation pools every variety of seasonal, periodic and heterogeneous employer for a tax to maintain an unemployment relief fund for some of the ex-employees of the group.

Here the scheme is removed from the bar of Section 23 of the State Constitution only by the assertion of the Alabama court that the purpose intended is general economic stability, state-wide, indeed nation-wide in character, so diffused as to

have merely an atomic effect on the employers who are made to pay for it; and no effect at all not shared by everybody in the State.

In the *Alton Case* the agencies "regulated" by the retirement tax were instrumentalities of interstate commerce. Here, no element or function of the business of appellee or of the vast majority of employers subject to the tax is claimed to threaten the public welfare or to require or justify regulation in respect to any element or relation of the business itself. There is no evil *inherent in their manner of doing business* or *inherent in their business itself*, to be eradicated. The evil to be eradicated is not employment but unemployment; a function not of employment but of society. The employers are the last members of society who can be charged with responsibility for unemployment. The only fault charged is that all of those taxed were guilty of employing more than eight persons, for more than 20 weeks, during the year 1936 and must therefore assume the burden of unemployment relief.

If they discharge all of their workers except seven or reduce the working time to nineteen weeks (which the act does not attempt to prohibit and in fact invites) then they are no longer taxed.

Appellee asserts that the scheme is *in all its aspects* a capricious imposition of a public burden upon a group singled out arbitrarily for the purpose.

(c)

Such benefits as will accrue to Appellee and the taxed employers will be merely the general benefit which may result to the public at large from general spending by the detached unemployed who draw the benefits.

Referring to the exaction or contribution levied upon the employer (Sec. 4-a) and the supplementary tax upon the employe (Sec. 4-d) the Alabama Court asserts (emphasis supplied):

> "The exaction of the tax on them both in the same Act is an excise tax on the coordinated business of employment looking to the end of helping them both *and the people generally.* * * *

Of course the controlling element in that statement rests in the final words, for the Court could not assert on the record before it or as a matter of judicial knowledge that improvement of the purchasing power and social morale of miscellaneous scattered unemployed persons would, on the average, help any employer taxed any more tangibly than it would help the citizens or businesses in the State not contributing to the donation. Common knowledge, the facts before the Court (on demurrer or motion to dismiss) in that case and proven here oppose any such suggestion. The finding below opposes it*

The Alabama Court makes plain that the Act recognizes that the evils of unemployment affect alike *all employers* and *all members of the public;* thus:

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*Finding 9, R., p. 180.

"Extensive unemployment depreciates consumer purchasing power, and tends to demoralize a large class of citizens and to stimulate crime, disorder and social degradation."

The opinion does not contend that this depreciation of purchasing power, and tendency toward crime and degradation of ex-employes will affect the group selected for the tax any more adversely or directly than it will affect non-taxed employers or the general public. Nor does the opinion suggest that former employers, remote, mesne or proximate, are in any wise responsible, or subject to be declared legally responsible, either for the unemployment or its consequences.

The foregoing quotations constitute a judicial determination by the Alabama Court that the purpose and intent of the Alabama Act is that the benefits are expected to extend to the employer class (and, indeed, to the public) *generally*, not merely to present employers of 27% of the labor of the State selected for the tax; for the opinion asserts that "all employers will benefit *on a horizontal basis.*"

The only conceivable method by which all employers in Alabama, or all taxed employers, will benefit on a horizontal basis is by reason of the fact that all citizens and all industries in the State will benefit on a horizontal basis, the taxed group included.

The Alabama Court was confronted with Section 23 of the State Constitution (supra) and the due process warning of *Railroad Retirement Board v. Alton R. R.* To avoid those impediments that Court was forced to discern in the scheme a public purpose for state-wide increase in the spending power of the unemployed in order to stabilize general economic conditions in the State. Otherwise the purpose was private, the exaction barred by Section 23 and the taking without due

process. This is necessarily true because there was and is no aspect of the relation between any given employer and his present employes which authorizes the Legislature of Alabama to mandate a blind increase in wages, in the form of unemployment insurance or otherwise. So, there must be a general or state-wide scheme.

As thus construed, the rationale of the Alabama Act affords no constitutional basis whatever for singling out employers of a fraction of the labor in Alabama to bear the burden of avoiding for the general public the consequences of "depreciated consumer purchasing power", "crime, disorder and social degradation," for which the employers taxed can under no theory be charged with responsibility.

The burden of ameliorating those calamities affecting all alike can not be laid upon a selected group.

(d)

The State's argument as to off-setting benefits in a waiting labor pool was not sustained by the Supreme Court of Alabama and is disproven and untenable.

The argument that the administration of the scheme will in the future confer benefits upon the employer class sufficient to off-set the tax, in a constitutional sense, was predicated by the State below upon the notion of a "pool of unemployed," which, it was urged, will be held at home while the unemployment benefits are being paid, thus awaiting reemployment.

That theory was given no support whatever by the Supreme Court of Alabama, which referred only in the most inclusive terms as to class benefits and, indeed, sustained the Act as a public tax measure because of the general public

benefits, carrying horizontal benefits to all employers, which the Court discerned in its tendency to afford purchasing power and sustain the morals of the unemployed.

To the State's — not the Alabama Court's — suggestion as to special or off-setting benefits inherent in the theoretical pool of labor we reply:

1) A system which levies today for a benefit supposed to begin two years hence, but by Federal command is subject to repeal as to appellee at any time without trust, refund or accountability, is not a fair or reasonable or constitutional equivalent for a present taking or classification.

Notwithstanding the amendment which excluded groups previously subject to the Act, the defendants demanded payment of the levy by those groups for the period up to the amendment (January 1 — April 20, 1936), thus making plain, as a matter of current administrative interpretation (Bill, Sec. 6, R. p. 6), that the distribution of benefits two years hence, when the benefits become operative, will not be regarded by the State authorities as having any bearing on or as reserved in trust, or otherwise, for the theoretical benefit of any particular employer or group which may at this time be subject to the tax.

2) The facts proven and the findings of the Court below disprove the reality of any such supposed benefits.

3) These further conclusions are obvious on this record:

Maintaining a pool of oyster-tongers in Mobile County during the off-season for that occupation, or a pool of cotton-seed oil workers during the offseason for those workers,* is

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*4 R. p. 118, fol. 155.

obviously remote in distance and without even a molecular effect upon the business of making paper in Tuscaloosa County or that of a fire insurance broker in Birmingham. Such illusory "benefits" can find no justification under the long established requirement of the decisions that a benefit supposed to offset a class assessment or justify a class-tax or police assessment must be special, tangible and direct to justify the taking or the classification. Where off-setting benefits are relied upon they must in their equivalence be obvious on the face of the regulation or assessment or the scheme must provide machinery for determination whether the benefits in fact reasonably justify the exaction. If not, the fact will be subject to judicial determination, and, where there is no provision for adjustment to meet the facts, the levy can not be sustained. *N. C. & St. L. Ry. v. Walters,* 294 U. S. 413.

Such assumed benefits as may hereafter result are conferred indiscriminately upon all employers as members of the general public, and are so general or social and remote as to fall beyond the settled requirements of the Constitution for an off-setting benefit tax.

In *Pennsylvania Coal Co. v. Mahon,* 260 U. S. 393, Mr. Justice Holmes conceded for the Court the principle of offsetting benefits as upon occasion justifying a taking. Thus:

> "It is true in *Plymouth Coal Co. v. Pennsylvania,* 232 U. S. 531, 58 L. ed. 713, 34 Sup. Ct. Rep. 359 it was held competent for the legislature to require a pillar of coal to be left along the line of adjoining property, that, with the pillar on the other side of the line, would be a barrier sufficient for the safety of the employees of either mine in case the other should be abandoned and allowed to fill with water. But that was a requirement for the safety of employees invited into the mine, and secured an average reciprocity of advantage that has been recognized as a justification of various laws."

But in that case the Court declined to admit that the general benefit of maintaining streets in a city above the coal seams of the owner of subjacent minerals was sufficiently direct or special to offset the damage incident to a statute prohibiting the working of the seam beneath such streets, without compensation to the owner of the coal. Obviously the maintenance of public thoroughfares and "excess pools" of workers and housing for workers and streets in the vicinity of mining operations carries social advantages. But they were not direct, offsetting or equivalent to the threatened taking; and palpably not sufficient to have justified a classification taxing the mines and excluding, as here, the general mass of taxpayers experiencing like benefits from the treasury burden.

Here, bear in mind, the proposed taking is annual and perpetual, for an advantage denominated an "excess-labor pool," existing in assumption and not in any tangible or provable sense whatever.

The most recent analysis of a so-called off-setting benefit contention by a State in support of a regulation is the opinion annulling the Texas gas proration orders delivered February 1, 1937, by this Court in *Thompson v. Consolidated Gas Utilities Corp.* 81 L. ed. (Adv.) 270

The local assessment cases cited and recognized by the Court in the *Thompson Case* as appropriate analogies to alleged off-setting benefits under a regulatory gas proration statute leave, we believe, no possible answer to our contention on this point. That line of cases is well illustrated by a case upholding the right to *judicial determination of off-setting benefits* where the burden of the improvement imposed was challenged as so arbitrary and unreasonable as to violate due process. We quote from *N. C. & St. L. R. R. Co. v. Walters,* supra p. 415:

> "The police power is subject to the constitutional limitation that it may not be exerted arbitrarily or unreasonably."

The Supreme Court of Tennessee was held in error for failure to consider the charge that the levy outweighed the benefits, in these words:

> "Unless the evidence and the special facts relied upon were of such a nature that they could not conceivably establish that the action of the State in imposing upon the Railway one-half of the cost of the underpass was arbitrary and unreasonable, the Supreme Court obviously erred in refusing to consider them" (ib., p. 415);

and this Court asserted with reference to the exertion of the police power:

> "But when particular indviduals are singled out to bear the cost of advancing the public convenience, that imposition must bear some reasonable relation to the evils to be eradicated or the advantages to be secured. * * * While moneys raised by general taxation may constitutionally be applied to purposes from which the individual taxed may receive no benefit, and indeed, suffer serious detriment, so-called assessments for public improvements laid upon particular property owners are ordinarily constitutional only if based on benefits received by them" (ib. p. 429).

The same principle applies to exactions of this nature. The "evil to be eradicated" at the expense of a particular group must be that for which they are responsible and the "advantages to be secured" must be a real equivalent when accomplished through a direct assessment or a taking.

The benefit which may justify a levy for a public purpose solely on the theory of off-setting benefits must not only be fairly equivalent but must be direct and tangible and in addi-

tion to the general benefit accruing to the public. Otherwise, if the benefits are merely those general benefits which accrue to the taxpayer, the classification, which singles him out and is defended solely because of benefits supposed to be peculiarly applicable to the group singled out for the tax, loses its validity.

(e)

The unavoidable implications of the Alabama exaction upon an employer group are basically untenable.

An exact analogy would be a proposal to tax all husbands for a fund out of which to pay alimony to divorced wives, regardless of their need, in order that they be assured of spending money during a waiting period, both as an aid to trade and to preserve their social morale.

A like analogy would be a widows fund, levied directly upon husbands over forty-five and disbursed without reference to the need of those who become widowed after 1937.

Conceding for argument as much public purpose in such measures as in the present Act, it is clear that all such bypassing of the checks and balances protecting the appropriation of public funds, all such "washing of hands" of responsibility of the State by passing the burden directly to the exaction group, constitutes the most dangerous menace which in its entire history has been unloosed on industry and business in Alabama by the "direct action" opinion of the Supreme Court of that State. This is particularly true, as here, where the shifting of public responsibility deals with the vast problem of indigent or depression relief arising out of unemployment.

There is the certainty that at every session of the legislature pressure groups will be on hand to enlarge the tax, increase the distribution and extend the period of benefits.

There is not even an atomic indication in the opinion of the Supreme Court of Alabama that there is any limit in the State Constitution or within that Court's conception of the 14th Amendment to break the syphoning of funds from employers for unemployment relief. Meanwhile the provisions of the State Constitution and its general laws safeguarding the expenditure of taxes* are thus by-passed and ignored.

The opinion of the Alabama Court indicates no faint conception of the precedent or its final and ominous implications.

> "If the body of persons to be benefitted is numerous, the greater is the influence that may probably be brought to bear to secure such an appropriation of the public money." *Kingman v. Brockton*, 153 *Mass.* 255, 26 N. E. 998, 11 L. R. A. 123.

Where the money appropriated is not out of the public treasury but directly out of the pocket of the employer into a fund for the eligible unemployed, falsely clothed as a contract right, the endless result is as obvious as it will be disastrous.

If the tax to provide a maximum benefit period of 26 weeks and a maximum benefit of $15 per week is to be sustained as improving in the public interest the spending power and morale of the unemployed, obviously 52 weeks at $30 per week would produce greater spending power and greater protection of morale.

If the tax is valid as a tax as written, the legislature is the judge of the amount and there is no recourse available to

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*Infra; Subsec. (f)

the employers of Alabama (except to the conscience of pressure groups which now control legislation in America) against the indefinite syphoning of industrial assets directly and indefinitely into unemployment relief, or any other public objective, free from the traditional checks which protect appropriations from the public treasury.

The scheme of direct assessment to which the Alabama statute and Court propose to subject selected employers is essentially arbitrary and so contrary to the traditional methods of meeting a public expenditure as to justify recourse to the 14th Amendment.

The people of Alabama have not been willing to enlarge constitutional debt limits or the authority of the spending agencies to further unemployment relief.* But while they are cautious as to their public funds, this Act now proposes to open the treasuries of a part of industry and business to direct relief not through taxation into the treasury, but by throwing open their reserves to indefinite expropriation in the guise of regulation, or as a pretended offset to asserted but non-existent special benefits.

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*By Joint Resolution (No. 11, Acts Ex. Sess. 1932, p. 12), passed by the House of Representatives August 30, 1932, and by the Senate September 6, 1932, there was submitted to the electors a proposed amendment to the Constitution which included the following clause:

> "Each municipality and each county in the State is authorized to appropriate funds for furnishing relief and work relief to needy and distressed people and to relieve the hardships resulting from unemployment, and any appropriation that may have heretofore been made by any municipality or county is hereby declared to be legal."

This submission followed very general expression of doubt by county authorities and County Attorneys as to the validity of the use of County funds for direct relief. This amendment was submitted to the electors at the election held November 8, 1932, and was rejected by a vote of 82,961 for and 112,001 against the proposed amendment. R., p. 129.

The Federal Government has forced this result upon Alabama, which necessarily enacted the Federal-drawn and Federal-proposed legislation when it saw that otherwise the amount of the pressure tax would be permanently withdrawn from the State.

(f)

The scheme is not only revolutionary and arbitrary but denies to the taxed group the equal protection enjoyed by those who pay taxes into the treasury.

The history of the use of unemployment relief systems to meet the public burden of depression makes plain the extraordinary danger of any mechanism which by-passes the safeguards of the public treasury and syphons directly from the taxpayer to the beneficiary.

The fact can not be ignored that, as asserted by the Alabama Court, this Act is part of a Federal enforced plan directly related to and intended to cushion nation-wide economic depression. The conception of the plan, its enactment, promulgation and administration leave no doubt whatever as to its intended bearing. Nor does the opinion of the Alabama Court. The Federal government or the Federal Board can at any time it may see fit withdraw its approval of a state scheme which does not advance its tax upon the selected groups to provide for more extensive unemployment relief benefits, should the Federal Administration consider that course necessary to deal with continued unemployment.

The State legislature may at will enlarge the tax and the payments.

That is precisely what occurred in the administration of the British Act.

"The British were faced with a choice between improvising an emergency machine for administering unemployment relief and expanding an existing institution to take over the additional load. * * * In the early stages of the depression, the British believed, as we believed in a similar situation later, that the large-scale unemployment was temporary, and that it would be possible to make up current deficits on the next upswing of business. Believing their difficulties short-lived, they were all the more inclined to entrust the extra load to the trained personnel of their insurance administration. In a desperate attempt to stretch the insurance system to feed the hungry unemployed and to prevent violence the government made frequent changes in the law. It was the attempt to adjust unemployment insurance to the pressure of this excessive unemployment for which it had not been designed that brought the scheme into temporary disrepute."—Economic Brief for State of New York in *Chamberlin v. Andrews*, Oct. Term, 1936, No. 49; p. 146.

The mechanism employed in this Act is intrinsically subject to abuse and withdraws or withholds from the employer taxed:

1) the safeguard of a judicial hearing as to the amount of the fund actually required, as to the benefit or apportionment of the burden;

2) the safeguards surrounding the levy, budgeting and appropriation of taxes for the public revenue;

3) the community of interest of all who pay taxes into the treasury against arbitrary appropriations of public funds for individual benefit, including all existing practical checks upon public spending.

This discrimination is violative of due process and equal protection. It denies to the subjects of this levy the privileges and immunities enjoyed by those citizens who are taxed by traditional methods. These concepts are basic to representative government.

A novel and dangerous mechanism for direct social taxation, stripped of conventional safeguards by the by-pass process here employed, can not be regarded as constitutional fair play.

It is a revolutionary device under which the employer group taxed is exposed to indefinite exploitation and by which that group will be forced to importune each legislature for protection from such exploitation.

The employer is, in fact, denied the traditional benefits of representative government in that the customary forms of appropriation and expenditure of his funds are denied him.

Now the question whether the form of government in any state is representative may be a political one, but where a process of taxation or the nature of an exaction is so novel as to generate a substantial doubt, that process necessarily becomes suspect under the due process and equal protection clauses of the 14th Amendment and should be considered judicially in that connection.

It is not representative government for the State to turn the resources of industry over to the unemployed, or to a limited portion of the unemployed.

There is a radical distinction in Alabama between taxes cleared through the treasury and appropriated to public use and exactions short-circuited from the taxpayer to a numerous class of beneficiaries, such as the unemployed.

Treasury funds are protected by Constitutional requirements.*

There also exist for the protection of the treasury dollar, rigid budget requirements (Acts 1932, Ex. Sess. p. 36; Michie's Cum Supp., Section 919) establishing a Comptroller, requiring preparation of a budget recommending expenditures and appropriations, accompanied by estimate of income, etc. In the event of insufficiency of funds there is provision for allotment.

Now none of these aids exist with reference to a syphon act of the character under review.

The appropriation here lasts forever; unlike recurrent appropriation of taxes.

Again, it must be remembered that the constant threat of the Federal Government standing over this scheme, to withdraw approval, provides a constant "something in the nature of a penalty" (Opinion, *Beeland Case*), to induce the State to allow this scheme, as so approved, to stand, unadjusted and the taxed employers unheard.

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*Sec. 72 of the Alabama Constitution of 1901:

"No money shall be paid out of the treasury except upon appropriations made by law, and on warrant drawn by the proper officer in pursuance thereof; and a regular statement and account of receipts and expenditures of all public moneys shall be published annually, in such manner as may be by law directed."

Sec. 73:

"No appropriation shall be made to any charitable or educational institution not under the absolute control of the state, other than normal schools established by law for the professional training of teachers for the public schools of the state, except by a vote of two-thirds of all the members elected to each house."

An unemployment relief scheme dictated and the funds frozen for two years and indefinitely in the Federal treasury is not under the "absolute control" of the State. See *State v. Sowell*, 143 Ala. 494, 39 So. 246.

All of these consequences establish a glaring disparity in substance and in form between the scheme according to which the employer group is taxed for the relief of unemployment and the method by which taxpayers generally in the State are taxed for public purposes.

Under these circumstances the traditional elements fundamental in the conception of due process are absent.

Due process of law, the equal protection of the law and the equality of privileges and immunities guaranteed by the Fourteenth Amendment require, in favor of those who are compelled to meet public objectives by direct expenditures out of their own pockets, the fair equivalent of those features of taxation necessary to its fundamental justice and to free institutions; certainly the equivalent of the safeguards assured to all who pay taxes directly into the treasury.

Pennsylvania Coal Co. v. Mahon, 260 U. S. 393 416;

Railroad Retirement Board v. Alton Railroad, 295 U. S. 330;

United States v. Butler, 297 U. S. 1, 61;

Loan Assn. v. Topeka, 20 Wall, 655;

Cole v. La Grange, 112 U. S. 1;

Parkersburg v. Brown, 106 U. S. 487;

Thompson v. Consolidated Gas Util. Corp., 81 L. ed. (Adv.) 270;

N. C. & St. L. R. R. v. Walters, 294 U. S. 405;

Panhandle E. Pipe Line Co. v. State Highway Comm 294 U. S. 613, 622.

Viewed as an exercise of the taxing power, the Act is arbitrary and prohibited by the 14th Amendment.

Heiner v. Donnan, 285, U. S. 312, 326;
Hoeper v. Tax Commission, 284 U. S. 206;
Schlesinger v. Wisconsin, 270 U. S. 230.

In *Heiner v. Donnan, supra, at p.* 327, the Court said:

> "Such an exaction is not taxation but spoliation . . . . This is very near to saying that the individual, innocent of evasion, may be stripped of his constitutional rights in order to further a more thorough enforcement of the tax against the guilty, a new and startling doctrine, condemned by its mere statement . . . . "

In *Hoeper v. Tax Commission, supra*, at p 215, quoting from Knowlton v. Moore, 178 U. S. 41, 77, this Court approved the assertion that a tax which is arbitrary and brings about " profound inequality transcends the limitations arising from those fundamental conceptions of free government which underlie all constitutional systems."

The entire formula represented by this Act results in a failure to provide methods for the determination of the amount appropriate to be raised, its apportionment and assessment against the group assessed, based upon its sole objective, which brings the scheme into conflict with the 14th Amendment.

That due process which even a tax demands has been thus stated by the Court:

> "It is sufficient to observe here that by 'due process' is meant one which, following the forms of law, is appropriate to the case, and just to the parties to be affected. It must be pursued in the ordinary mode prescribed by the law; it must be adapted to the end to be attained; and wherever it is necessary for the protection of the parties, it must give them an opportunity to be heard respecting

the justice of the judgment sought. The clause in question means, therefore, that there can be no proceeding against life, liberty, or property which may result in the deprivation of either, without the observance of those general rules established in our system of jurisprudence for the security of private rights."—*Hagar v. Reclamation District*, 111 U. S. 701

Nothing is better settled than that the general system and procedure for the levy and collection of taxes and customary usage, notwithstanding informality of notice, are held to satisfy due process (*Kelly v. Pittsburgh*, 104 U. S. 78, *Bell's Gap R. Co. v. Pennsylvania*, 134 U. S. 232, 239). By parity of reasoning, when the transfer of a plain public burden to a selected group of citizens is accomplished by a tax scheme revolutionary in type, summary in method, anticipating by not less than two years the use of the fund (meanwhile lending it on open account to the Federal treasury), we assert that due process is not afforded.

Always let it be borne in mind that this Act is the hand of Esau but the voice of Jacob; that the form and substance and object of this Act were initiated and compelled by the Federal Government under the pressure tax levied by Title IX and that the Supreme Court of Alabama admits that there was "something in the nature of a penalty" for not yielding! That is enough.

(g)

The State could not, consistently with due process, impose upon individual employers the duty of insuring their own employes against unemployment.

To seek to impose upon any employer responsibility for unemployment relief after the complete and non-actionable

termination of the relationship would be a clear violation of due process.

As pointed out by the court below, imposing this sort of responsibility by law is merely horizontal wage fixing.*

It would be without reference to any standard whatever, applied indiscriminately to all ages, sexes, classes, salaries. It merely adds to any wage agreed upon and lawful *per se* under the law of the State an arbitrary percentage to be paid without any reference to any known test or standard.

Such interference with freedom of contract; such arbitrary creation of direct responsibility for unemployment finds no justification in any adjudicated test of the 14th Amendment.

This is no statute to further the principle of fair negotiation looking to a contract (*Virginian Railway Company v System Federation No.* 40, *March* 29, 1937).

This is a statute dictating an addition to the final wage, reached after negotiation, which must on this record be presumed to be fair and is beyond the power of the legislature of Alabama to dictate. We do not understand that *Adair v. U. S.*, 208 U. S. 161, is overruled by the *Virginian Railway Company Case, supra,* or by the *Railway Clerks' Case* (*Texas & N. O. R. Co. v. Brotherhood,* 281 U. S. 548). See also *Wolf Packing Co. v Industrial Court,* 262 U. S. 522, 267 U. S. 552; nor do we understand that the *West Coast Hotel Case* was intended in any sense to suggest that a state legislature

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*Of course no such scheme as this Act can take comfort from *West Coast Hotel Company v. Parrish,* (Decided March 29), in which this court sustained a statute under which was established a minimum wage for women, after hearing, in industries in which the wages paid were "inadequate to supply them necessary cost of living and to maintain the workers in health. Any such order might be re-opened."

may by statute add an arbitrary exaction to all wages as this statute, in effect, proposes.

Appellee's business, and the business of the employer group subjected as a whole to the levy of this Act to relieve unemployment, cannot be said to be peculiarly productive of unemployment. The bill avers and the proof shows that Appellee's business is not. We assert that there is no element of Appellee's business of such nature as to justify a State police regulation requiring the business to give indemnity to its individual employes against unemployment, or to pay a tax equivalent to the cost of such indemnity into a State pool, as here.

The opinion of the State Supreme Court makes no effort whatever to suggest that the business of Appellee or any particular employer of the taxed group is subject to regulation in respect to exits, discharges or reemployment of its individual employes, as might conceivably be the case where there might exist deception or overreaching or a form of employment contract oppressive in character. That was the question on which the court divided in *Coppage v. Kansas,* 236 U. S. 1. No such question is involved here.

Where a citizen who, two years before potential application for benefits, is employed by plaintiff, presently leaves the service voluntarily to seek and obtain intervening employment, intending never to return to the original employment, or who is discharged for cause permanently disqualifying him from further re-employment, it can not be asserted that a future subsidy to this citizen and his subsequent un-employment resulting from discharge or exit *from some other employment two years hence,* is a function of the present employment.

Overruled though it is as to the validity of appropriate minimum wage laws for women, we submit that the argument

of the *Adkins Case* (261 U. S. at p. 559) pointing out the necessity that legislation regulating the employe relationships must take into consideration and relate to circumstances within or leading up to the agreement is sound:

> "A statute requiring an employer to pay in money, to pay at prescribed and regular intervals, to pay the value of the services rendered, even to pay with fair relation to the extent of the benefit obtained from the service, would be understandable. But a statute which prescribes payment without regard to any of these things, *and solely with relation to circumstances apart from the contract of employment, the business affected by it, and the work done under it*, is so clearly the product of a naked, arbitrary exercise of power, that it cannot be allowed to stand under the Constitution of the United States." (Emphasis supplied).

We discussed above the lack of due process in shifting directly to a selected group the perpetual subsidy of the unemployed. The following illustrations and decisions make plain the absence of constitutional relationship of the scheme here imposed to the status and relation of employer and employe.

Many things are potential or probable or inevitable *during* employment; illness due to causes other than the service; inadequacy of reasonable wages or salaries to meet the family exigencies of the particular worker; highway injuries and natural death. Financial responsibility for these exigencies, however probable or inevitable during the employment, can not be cast upon the particular employer, or upon employers by indiscriminate groups.

No regulation of the relationship of employer and employe can be sustained which is not directly and reasonably related to the employment. The extreme limit is illustrated by

Cudahy Packing Co. v. Parramore, 263 U. S. 418, in which an injury to an employe while traversing a portion of a public street *necessary to be used to enter the plant* was held to be sufficiently related to the employment to entitle the injured employee to compensation.

So, in *Crowell v. Benson* 285 U. S. 22, 55-56, the Court held that the power of Congress to enact a maritime compensation act depended upon the existence of the relation of employer and employee and, necessarily, could apply only to compensation for injuries arising *directly out of that relationship*. This Act does not remotely propose to relate the unemployment here relieved to the present employment.

The compulsion of payment of unearned money by an employer to a third party can never be a regulation of the relation between the employer and his employe. The employer and employe have agreed, without overreaching, upon the salary or wage. This Act includes the $50,000 executive. To force the employer to recast the salary agreement and provide for his mythical and remote unemployment is arbitrary.

In the Cudahy Case, the Court said:

> "It may be assumed that where an accident is in no manner related to the employment, an attempt to make the employer liable would be so clearly unreasonable and arbitrary as to subject it to the ban of the Constitution;
>
> . . . . .
>
> "The liability is based . . . upon the existence of the relationship which the employee bears to the employment because of and in the course of which he has been injured." 263 U. S. at 423.

On these premises, the Unemployment Compensation Law must be condemned upon the authority of the Workmen's

Compensation cases because it lacks and violates the fundamental basis of intrinsic relationship upon which those cases are rested.

(h)

Owing no duty to insure its own employes against unemployment, none can be imposed upon appellee as to employes of others.

Since in general no duty or responsibility for ordinary unemployment of their own ex-employes can consistently with due process be imposed by law upon individual employers it is the more certain that no such duty or responsibility can be imposed upon selected pools of groups of employers in respect to the aggregate unemployment of their ex-employes as a whole.

The sole argument for the pool liability is that in certain businesses there is great seasonal and periodic variation in employment, resulting in waiting periods; that these businesses can not support unemployment compensation for their own exits; that the pool must therefore be filled by businesses having little or no exits.

That may be a practical argument for pooling; but it is wholly lacking in constitutional validity. The admission intensifies the arbitrary character of the exaction as to those businesses which are not seasonable or highly sensitive to market fluctuation. It lacks even the identity of enterprise which was insufficient to save the Railroad Retirement Act.

The Appellee here is an industry constructed and put in operation immediately prior to the depression which has oper-

ated with no interruptions due to the market or the depression or of such character from any cause as would have created eligible unemployment in any appreciable amount.

When Appellee is pooled in a scheme the rates of which are predicated upon a guess as to the requirements of total unemployment, it necessarily follows that Appellee is forced to contribute on a basis having no reasonable bearing on its own relationship to the creation of employment.

The bill avers the significant life history of its employment in Alabama in these words:

> "Plaintiff avers that the risk of unemployment originating in its own plant is, as to the future, remote and imperceptible, and that the general or conjectural risk of unemployment originating at the plants of other employers is not a function of plaintiff's business or operations such as to warrant legislation by the State of Alabama throwing upon plaintiff the responsibility for and cost of providing directly against such unemployment in either case.
>
> "There is no plant or business in Alabama in which operations, once begun, have been slowed down or employment curtailed as a result of plaintiff's continued operation of its plant and business or as a result of competition from plaintiff.
>
> "On the contrary, plaintiff's continued operation from the beginning has tangibly, continuously and directly contributed to employment in other businesses in Alabama."

(From Sec. 11, R., p. 10).

Under these circumstances the pooling of Appellee in a scheme to provide unemployment relief for the exits from

contractors who work when they have a job, canning plants and cotton gins and cottonseed mills, and like seasonal or fluctuating businesses is arbitrary in the extreme.

The arbitrary character and five year sentence was premeditated. The New York economic brief made plain that the purpose of including the steady employments was to average out, at their cost, the higher cost of a statewide scheme arising out of the fluctuating trades.

(i)

The levy of a flat tax for five years without possibility of adjustment to appellee's business is arbitrary.

Because of the wide disparity in relation to unemployment existing within the group selected for the burden of unemployment relief, the levy of a flat payroll tax for five years without possibility of hearing or adjustment is plainly arbitrary. The Alabama Court's justification of the omission is unsound and is predicated on assumptions as to horizontal benefits disproven on this record.

The above objection to the Act is closely related to the objection based upon pooling.

The opinion asserts that a merit rating is not essential to the Alabama Act *"because all employers will benefit on a* horizontal basis" from the effects sought to be accomplished.

Of one conclusion there is no doubt: that this Appellee and the taxed group are not responsible and can not consistently with the Constitution be made responsible for depression or unemployment cycles.

Let the Court attend to these representative expressions from the argument for the New York Law:

> "Unemployment has its roots in the irregularity of industrial activity and growth and has increased from decade to decade as our economic life has become more complex. In the long run the major causes of this irregularity are traceable to technological, geographic, population and market influences. Complicating and intensifying these long-run influences are cyclical and seasonal fluctuations, evidences of industrial maladjustments which reach their climax in depressional unemployment and business stagnation." (N. Y. Economic Brief, p. 1*).

Now is that the fault of appellants, for which they should be fined 3% of their payrolls; or is it the responsibility of society itself? And here is recognition enough that this Act proposes to solve a public responsibility by casting it upon appellants:

> "The history of public welfare in the United States reflects a steadily growing sense of public responsibility for the relief of unemployment. It also shows that tidal waves of mass unemployment, characteristic of major depressions, usually inundate the regular work of private and public welfare organizations, swamp their available facilities and impair regular provision for chronic dependency." (ib.).

The report admits:

> "The individual business concern operates in the midst of a maze of forces beyond its immediate influence. A New York employer has recently pointed

*Quotations are from brief filed for the State in the N. Y. Court of Appeals. We understand substantially the same brief was filed in this Court.

out that '. . . the individual employer has virtually no control over the markets to which he sells his products. His output, and hence the number of men he can employ, is controlled by conditions almost entirely beyond his control . . . No one is more eager than he to employ a maximum of workers, but in this respect he has no arbitrary power'." (ib. p. 42

and that

"It is clear that unemployment created by technological change and market shifts cannot be anticipated or provided for by individual employers or industries." (ib., p. 61),

and here is the final statement of responsibility: a haze through which the principle of the *Adair Case* can not be discerned:

"Employers releasing workers temporarily should provide at least in part for their maintenance until there is again need for their services. Employers whose businesses are expanding or are expected to expand are equally dependent on this labor reserve on which they will draw. They should regard themselves as equally responsible to help maintain it while on call." (ib., p. 80).

The New York Economic Brief admits the uncertainties as to the ability of the individual plant to pass the tax on to the public:

"The burden imposed upon employers by a 3 per cent payroll tax will obviously depend upon the extent to which they can pass it on." (ib., pp. 85-6).

The Brief enumerates six conditions affecting the ability of the employer to pass it on. For the present, or short run effect, the Brief admits the case for which we contend:

"I. The *short-run* effects of such a tax may be radically different from the ultimate or long-run results. These short-run effects, which depend on the particular economic conditions existing at the time the tax is first imposed, do not allow broad generalizations on incidence." (ib., p. 86).

Assembling the opinions of economists as to the ability to pass on the tax, we find in the Brief no such dogmatic assurance as is advanced by counsel for the State. Certain of the economists indicated that the amount would be taken out of wages, which is prevented by the Alabama Act*, and none of the economists quoted in the brief indicated any thought other than that as an element of added cost it would sooner or later trickle into price; or the plant would trickle into bankruptcy.

What has been stated is sufficient to make obvious that the remote or eventual passing on of the tax is no constitutional equivalent of the present taking from employer for the relief of the floating pool of unemployed in violation of the known and traditional limitations of the Constitution. A direct payment is a direct payment, by whatever casuistic name it is called.

That quotation (supra p. 39) appears contradictory to the recognition by that court, above quoted, that many employers will have no connection with unemployment. It is contradictory unless the Alabama Court means that all employers and all the public will, alike, benefit horizontally and inadmeasurably from alleviation of unemployment, and, accordingly, that there can be no merit rating.

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*No employer shall make or require any deduction from wages to finance the contributions required of him."—Sec. 13 (a).

A sufficient answer to that hypothesis is that the Act does provide for a merit rating—after five years—that Appellee stands ready today to prove the absence of fair prospect of substantial exits eligible for benefits and that the procuring cause of the entire scheme, the Federal Act, by Sections 9 and 10 expressly contemplates the allowance of additional credits on the Federal tax for merit rating (after three years experience—five years payment of taxes under Sec. 910).

In short, the answer of the Supreme Court of Alabama is a palpable evasion of the fact that the denial of merit rating for five years is due, not to the disproven facts asserted by that Court, but to the mandate and penalties of the Federal Act.

It should be noted here that Sections 909 and 910 of the Federal Act are the provsions that give employers a credit on the Federal tax *beyond the amount paid to the State* to the extent of any reduction of their State tax as a result of merit rating; that is, they are given a credit on the Federal penalty for good conduct under State laws. We do not believe that the dissenting opinion in *U. S. v. Constantine, infra*, undertakes to defend a Federal exaction which is reduced for good conduct under a state law, the idea being that it might tax heavily bad (illegal) conduct because of the difficulty of collection.

The Court sought to justify the lack of such cognizance (merit rating) by asserting that there is at present no available data on which to fix the merit rating basis. The Alabama Court said:

> "It is impossible to forecast the extent to which each employer will directly or indirectly contribute to unemployment, so as to put them on a merit rating basis except

by reference to past experience for which there is no available data at the present. And then the situation would be speculative."

That observation is not correct as to Appellee. It is not correct as to a large proportion of employers taxed. The experience of Appellee since the beginning of its operations in 1928 is available in detail* That same experience is obviously available in greater or less degree for every established business in Alabama.

That experience was not available to the Legislature for the purposes of merit rating solely because, as averred and proven on this record, the Legislature did not desire it and made no effort to obtain it.

The same experience-data may or may not be available to every other employer covered by the Act, but if any employer has the proof he is entitled to an opportunity to present it in a judicial or quasi-judicial proceeding. It is hardly an adequate reply to one's assertion of a right, that some may not be able to prove a similar right. It is a strange assertion that a legislature can arbitrarily deny the opportunity to to be heard because it does not know what evidence will be presented.

The available data is not available for the current adjustment of the burden under the Alabama Act because the Legislature has denied to the State Unemployment Compensation Commission any authority to hear employers on their unemployment experience until 1941. That action is due to the "coordination" with the conditions prescribed by the Federal Act, viz., no benefits must be paid for two years [Fed. Act.,

*R., pp. 114-117, 132-136.

Sec. 903 (a) (2)] and, in the case of State pool systems, no credit on the Federal inducement tax is to be allowed for merit rating until there has been three years additional experience [Sec. 910 (a) (1)].

Obviously if merit rating were permitted to reduce the tax imposed by the State Act on any given employer before 1941 (when the good behavior credit is first allowed on the Federal tax), it would avail the employer nothing, since it would automatically reduce the credit on the countervailing Federal tax levied under Sec. 901.

For Appellee, Gulf States Paper Corporation, had the Act been in effect during the period 1930-1936, the testimony (Warner, R. p. 117) indicates that the distribution of benefits to unemployed exits from Appellee's personnel

> "would have been a small fraction of the total levies against the Company and its employes as to workers employed on a hourly basis, and would * * * have been nominal or negligible as applied to plant workers employed on a salary basis, and *would have amounted to nothing for salaried officers in the central office.*"

The Court asserts that the Act looks to an adjustment of the responsibility for unemployment in 1941 and thereafter, five years after the beginning of the tax.

The opportunity for adjustment beginning in 1941 is plainly inadequate. The matter is delegated, without direction, to the Commission. It is limited to an adjustment in any event not lower than 1.5% of the payroll, and must, for all employers *average an arbitrary* 3%. That is not adjustment at all. This is not a tax for the general purposes of or ever to be paid into the public treasury. It is an expropriation from selected employers for the improvement of the gen-

eral purchasing power of the unemployed, supposed to be sustainable because of benefits to the taxpayer group and supposed to be adjustable to employment experience and the relief load — after five years; but the Act provides for neither adjustment of the individual employer's responsibility nor the tax in the aggregate.

The deferring of distribution of benefits for two years and merit rating adjustment for five years, and the reserved (and freely exercised) right to repeal and amend the Act makes the Act arbitrary as to those taxed in the interim on a flat basis to support a future scheme.

(j)

The proximate and controlling effect of the law is the exaction of money for private donations.

The dominant, and proximate and necessary effect of a statute determine its validity under the Fourteenth Amendment and not the remote expectations or remote or secondary consequences of the law. By that test, notwithstanding the state-wide or nation-wide public purpose discerned by the Alabama Court, the Alabama Act is so essentially private as not to justify expropriation from appellee for the unemployment insurance fund.

It is indisputable that the dominant objective and proximate result fix the constitutional characteristics of a law, asserted to violate due process.

Stated differently, a secondary or indirect public advantage does not make a project a public one justifying taxation.

Loan Assn. v. Topeka, 20 Wall. 655;
Parkersburg v. Brown, 106 U. S. 487;
Cole v. La Grange, 113 U. S. 1;
Lowell v. Boston, 111 Mass. 454.

Bearing in mind the remotness of distribution of benefits (deferred for two years as a result of the mandate of the Federal Act), we insist that the remote public advantages discerned by the Alabama Court in the future expansion of purchasing power (for the prosperous as well as the indigent unemployed) cannot be held to be the dominant and proximate characteristics of the statute which determine its validity.

The dominant impact of the Act is plainly private. Hopes, consequential in character, can not overcome the fact that the proximate and direct result of this Act is direct aid to individuals having at the time of receipt no actual relation to any employer subjected to the tax.

Tested by the principle announced in the cases cited, the relief required by this Act will be essentially private in character, and therefore can not, consistently with the 14th Amendment, be imposed upon Appellee either as to its own exits or as to the unemployed generally in the State.

There are no recitals in the Alabama Act purporting to redeem a bad act by a good motive or to conceal the primary object under a misleading statement of intent.

The direct and necessary effect of the State Act is a vague gesture in the direction of unemployment relief but proximately and immediately a series of donations to unemployed persons without reference to need and with the effect and probability of the spending of the benefit wholly speculative.

(k)

The provision for payment of benefits regardless of need is arbitrary.

The requirement of the Act that unemployment relief be payable as of right without reference to the necessity of the unemployed renders the scheme arbitrary and further emphasizes the private character of the proximate effect of the Act.

This Act is not sustained as a regulation of the relation between any given employer and his employe upon the constitutional theory of a minimum wage, but solely as a measure to alleviate the general effects of destitution and social immorality. To a system based on that hypothesis recognition of the need of the distributee is indispensable.

The conception underlying the contract basis, rather than the relief basis, of unemployment relief emphasizes the arbitrary character of the exaction laid upon the taxed employers.

They are forced to meet not only the public obligation to care for actual indigency but to increase the purchasing power of those who may be wholly removed from any need of the donation.

> "State support furnished as state aid indiscriminately to all of these classes, to the needy, and to the well to do, is beyond the power of legitimate legislation. We know of no state legislation where 'state aid' has been granted without reference to disability, necessity, age, or exceptional service. No public purpose is subserved by taking by taxation the property of the many and giving it under the guise of state support to those who are out of reach of its need."—*Beach v. Bradstreet*, 82 Atl. 1034, 85 Conn. 344.

And see Judge Brewer's opinion in *State v. Township of Osawkee*, 14 Kan. 418 (2d Ed. 322.)*

Improving the purchasing power of the needy may be a public objective. Certainly there is no public objective justifying the expropriation of money from A to improve the purchasing power of B, who is in no need of funds to avoid destitution or tendency toward crime or despair.

This is the more obvious since the Supreme Court of Alabama sustains the statute only on the theory that it supplies purchasing power to those *who for the lack of it* are potential drags or menaces. If they do not in fact *need* the distribution, the reason fails.

(l)

The analogies relied upon by the State do not sustain the theory of the Act.

Any analogy drawn from American legislation must necessarily be of little or no assistance here, as no such law has ever been attempted in this country. What we have said with regard to the operation and nature of this law is sufficient answer to the alleged precedents brought forward below and in the State Court, but we notice them briefly here, as some reliance was placed upon them by the Supreme Court of Alabama.

Workmen's Compensation Not Analogous.

What has been said above with reference to *Cudahy Packing Co. v. Parramore* and *Crowell v. Benson*, is sufficient reply to the asserted analogy of *Mountain Timber Co. v.*

*Quoted in the Brief for Appellee in *Carmichael v. Southern Coal & Coke Co.*, No. 724, at p. 91:

Washington, 243 U. S. 319. Moreover, there the Court was careful to point out that the State had made an earnest and careful effort to classify industry according to probability of accidents, setting up 47 classifications, with varying assessments for each according to the danger.

A similar argument based upon that case was rejected in the *Railroad Pension Case*, 295 U. S. 330, 369, 371, with the assertion that no effort at rational classification was attempted in the Railroad Retirement Act. Aside from the matter of arbitrary classification, here there is absolutely no relation between the occasion that gives rise to the gratuity required to be paid and the employment which is assessed, or between either of them and the amount of the benefit.

Workmen's Compensation laws not only predicate liability or payment upon an injury directly related to the employment both causally and in time, but they fix the amount of the award with specific reference to a disability or a need. Here the unemployment is unrelated to the employment which is taxed, is not contemporaneous, and the amount of benefit is not related to need or circumstances.

Deposit Insurance Laws Not Analogous.

The principle of regulation of a business subject to regulation or prohibition by requiring security for deposits, applied in *Noble State Bank v. Haskell*, 219 U. S. 104 is not applicable. The business of making paper in a plant with a record of substantially continuous operation can not be required to indemnify employes of other businesses against unemployment as a condition to the State's consent to its operation at all.

The analogy is sought to be made by the opinion of the Alabama Court between the benefit to banks from deposit

guaranty and the general benefit to employers from this unemployment tax, the theory being that the deposit guaranty tax carried an off-setting benefit in depositor confidence, just as, here, it is said that the Alabama Act upholds "an economic and moral status necessary for their (employers') successful operation." The analogy is grossly unsound.

The receipt of deposits from the public, for use by a bank, is subject to regulation; in fact, as held in the *Haskell Case*, to prohibition.* Each bank could be required, like insurance companies, to impound assets or give bond, as security. The tax for a State fund was presumptively a fair equivalent, less expensive, more easy to comply with, and therefore within the police power of regulation as a substitute for a bond. We do not believe this Court will look with favor upon an open end mortgage of the deposit guaranty type as to industry which is not subject to organic regulation or prohibition.

The deposit guaranty tax was applied to all bank depositaries who took, and used at will, deposits by the public. There is no such inclusiveness here. The putative public benefit from ex-employe compensation and social welfare is not any more necessary to the successful operation of the business of the taxed employees than to the successful operation of any business whatever in the State and the tax here is not a regulation of any business at all or of any liability to any individual or to the public. It is a bald expropriation of

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*"We cannot say that the public interests to which we have adverted, and others, are not sufficient to warrant the State in taking the whole business of banking under its control. *On the contrary we are of the opinion that it may go on from regulation to prohibition except upon such conditions as it may prescribe.*" 219 U. S. at 113.

funds for a general social objective, exacted from a wholly unrelated group.

The exaction is compared to that of the *Head Money* Cases, 112 U. S. 580, sustaining a fee for the relief of indigent aliens. Aliens can be, and are now, excluded entirely, and we would suppose therefore that a tax of fifty cents for importing them could readily be allowed. It is also notable that the money was to be used for the care of the indigent and not distributed generally by way of increasing the purchasing power of immigrants.

(m)

The State Act and the Alabama opinion erroneously assume that the right to employ or be employed is a franchise that may be granted on condition that the parties assume extraneous obligations of the State.

Up to this time the argument has not been advanced before this Court that employment is *per se* wage slavery and that no one should work except for the State.

From that premise, foreign to our system, it might logically be argued that the right to employ or be employed is a privilege which may be withheld absolutely, like a franchise to operate a railway in the streets, or be granted on such terms as the State may impose. That, indeed, is the only theory upon which this law can be sustained, and is apparently the basis upon which reliance is had upon *Noble State Bank v. Haskell, supra.*

The right to employ and be employed is as basic to our system as the right to breathe or live at all, a right so obvious that the Supreme Court of Alabama has overlooked it entirely;

or has confused with a wholly different right, if it may be so termed, viz., the right to look to the government for aid if employment can not be found.

For these reasons we assert that the right to employ or be employed can not under our system be doled out by the Government on condition that the employer or the employe assume directly in connection with the employment some obligation of the State.

There may be regulation, to be sure, relating to the employment itself and not to some extraneous responsibility of the State. We find nothing in *West Coast Hotel Company v. Parrish,* March 29th, to suggest that the natural right to labor (employ and be employed) can be bartered by the State or that the contract of employment may be dictated except in re-respects reasonably appropriate to

> "suitable protection of health and safety, and that peace and good order may be promoted through regulations designed to insure wholesome conditions of work and freedom from oppression." *

It is obvious that the Alabama Act is not a regulation of this nature. It superimposes upon the contract of employment a grave but wholly extraneous function of the State, relating, not to the employment but to the duty of the State itself with respect to a *wholly fortuitous* situation (unemployment) intervening and continuing after the complete termination of the employment and existing only because of such termination. In short, by definition it is the antithesis of employment.

**West Coast Hotel Case, supra; Holden v. Hardy,* 169 U. S. 366; *Chicago, Burlington & Quincy R. R. Co. v. McGuire,* 219 U. S. 549, 565, and other cases cited in the *West Coast Hotel Case.*

To maintain under these conditions that the State by arbitrary and conclusive fiat can relate to the employment and read into its terms an obligation relating to a status having no ~~causal~~ or proximate relation to the employment is to throw reason and the Constitution away.

This Act asserts in effect, under the whip of the Federal scheme, that there is an irrebuttable presumption that all unemployment accruing after 1937 arises out of all previous employments to which the taxed employers may have been parties. The statutory implication is necessarily false and its attempt to make the falsehood conclusive is violative of due process.

Heiner v. Donnan, 285 U. S. 312;
Schlesinger v. Wisconsin, 270 U. S. 240;
Bailey v. Alabama, 219 U. S. 219
Manley v. Georgia, 279 U. S. 1.

(n)

The tax upon employes levied by Sec. 4 (d) can not be sustained as a scheme for compulsory self-insurance.

We do not believe that under any traditional theory of the 14th Amendment a requirement that all employes *insure themselves* against remote unemployment can be sustained as a tax-police measure. The theory on which that program is pressed must be that the legislature has determined that all wage workers and salaried employes are inherently improvident or threaten social solvency or are potential destitutes and can therefore be made to take out unemployment insurance.

The conception is alien to all established principles of freedom of contract and due process.

The levy is, moreover, essentially arbitrary as to the employe, for the reason that any future benefit by the employe who pays the exaction is remote, speculative and uncertain. He may never become unemployed. He may, at the time he becomes unemployed, have been working for an employer who employes less than eight and therefore be ineligible. The act might at any future time be repealed, either by the State or by the Congress, which is in effect given the right to repeal the State Act by Section 18 as amended. The right to amend or repeal is expressly reserved and in fact the act has been amended so as to exclude a particular kind of business (railroads) and its employes.

While the employe contribution does not fall directly upon Appellee, Appellee may nevertheless challenge the Act because of the obvious invalidity of compulsory self-insurance against unemployment, for these reasons:

1) The provision can not be segregated. The compulsion is joint and inseparable.

2) The void provision menaces Appellee with continuing suits for invalid deductions from wages.

3) The provision for the tax and its distribution emphasizes the fact that the "benefits" are not primarily or directly intended for the employer sufficiently to classify him for the tax.

(o)

The Alabama Supreme Court clearly holds that the employer and employe tax levied by the Act and the purposes for which it is set aside are inseparable parts of a single objective.

We can not be in doubt under the opinion of the Alabama Court that (1) the employer tax [Sec. 4 (a)], (2) the employe tax [Sec. 4 (d)], and (3) the benefit provisions are inseparable. The objective and administration of the Act are relied upon by the Court to sustain the validity of the classification or benefit, both as to employer and employe.

Certainly the tax can not be sustained as to the employer and void as to employe, and vice versa, since the Legislature can not be presumed to have levied a tax for a supposedly rational objective in double the amount of the public need which alone is said to justify the classification or benefit.

(p)

The number and weeks classification of the State Act, which excludes more than seventy per cent. of the employe population of Alabama, is plainly arbitrary as related to the objective of the Act.

The Circuit Court of Appeals in the pending case of *Chas. C. Steward Machine Co. v. Davis, No.* 837, speaking through Sibley, J., a member of the three-judge court below, held that the numbers (8 employe) classification of Title IX of the Federal Act did not make the Federal Act

invalid as a *tax* measure, although arbitrary from the standpoint of unemployment relief regulation as held in this case.

That Court (CCA) did not consider the double classification also involved both in the Federal and State Acts.

As we have pointed out with reference to the State Act, the measure, although in the form of a tax statute, is not in fact a revenue act, as admitted by the Alabama Court, and must be weighed as a regulatory or benefit-tax from the standpoint of determining the exceptions which may be made from the employers to be subjected to the burden.

On this point the court below found and held:

> "The main classification is between employers of eight persons or more and those of less than eight. Some employers and employees are now by litigations opposing the law on the ground that it is arbitrary to include in the burdens and benefits of the law employers and their employees where there are eight employed and to exclude where there are only seven or six. No reason for the difference thus made appears. It is suggested that very small payrolls would not yield much contribution nor pay to bother with. But from the employee standpoint the need of protection is not less because he works with fewer employees, and from the public standpoint the unemployment of a number of persons carries the same menace whether they formerly worked for large or small concerns. It is evident that six or seven high salaried employees would cause a much greater payroll than a dozen or fifty day-laborers. No reason is found for the inclusion alone of employers of eight or more persons; nor why less than all should be included. If a store having seven employees is com-

peting with one having eight, it is manifest that the former can undersell the latter, and the latter must discharge one employee or go broke and discharge all eight, equalizing wage reductions being forbidden." Finding No. 8, r. p. 180.

"If an insurance Act like this could stand up which either covered all employments (not excepted for valid reasons), or which classified employments so closely as to escape arbitrary imposition of burdens (see Mountain Timber Co. vs. Washington, 243 U. S. 219), the present Act denies due process in that the classification of employers having eight or more employees is entirely arbitrary. Whether viewed from the standpoint of employers or employees there is no reason for the distinction made, and equal protection of the law is not afforded either to employers or employees. Colgate vs. Harvey, 296 U. S. 404, 423, 425."—Conclusion No. 4, R. p. 182

This question was not discussed and apparently not considered by the Alabama Court. The inference from the opinion is that any class of employers selected wholly at random may be required to provide unemployment relief for the benefit of "unemployed in that class." Just what that means is not clear. The unemployed belong to no class. There are charges upon and the responsibility of the public precisely because they are unemployed by any person. It is wholly arbitrary to ascribe them to the 8-worker 20-week class of employers, any more than to the farms or the other exempted or non-taxed employers who account for more than 70% of the workers of Alabama.

The opinion of the Alabama Court that the Act is valid only because the objective is general (indeed, national) improvement in purchasing power and morale on part

of the unemployed, thus stablizing market demand essential to all employers, makes plain that the classification of this statute, *as related to that end,* is grossly arbitrary.

The distinction between 8 or more and less than 8 is wholly capricious if, as is the case, the small units which fold up seasonally and in depressions and notoriously represent the marginal problem, contribute so heavy a percentage to the problems of unemployment that to exempt them merely singles out the taxed groups to carry the burden for all. The small firm employes exempted are estimated at 102,400, farm and other exempted labor, 648,845, and employes of the taxed group, 275, 175 (Affidavit of Halfpenny, R., p. 75).

Considered in the light of the Alabama Court's theory that the general effect of unemployment is the justifying objective and that the trickling of relief funds into trade (along with improved morale) constitutes the reasonable remedy, there is plainly no reason for singling out arbitrarily a minor group for the gesture.

Note particularly that the Act exempts employers, no matter how many workers they employ, who work less than 20 weeks (38.4% of the year). What reason can be advanced for any such arbitrary factor? Certainly not the unemployment involved.

The fault with the Alabama Court's conclusion is that it justified the act on the ground of general unemployment relief and straightway forgot that objective.

We therefore contend as the court below held, that the classification of numbers and weeks is wholly arbitrary in exempting those employers in businesses identi-

cal with the businesses included, who employ less than eight or operate for less than twenty weeks.

Classification of industries for regulation as to health and safety or conditions *within the particular plant* may well be predicated on size, as reflected in the number of employes, or may for various discernible reasons except small units. See ca. ci. by Brandeis, J., dissenting, in *Louisville Gas & E. Co. v. Coleman*, 277 U. S. 32, 42; *Ward & Gow v. Krinsky*, 259 U. S. 503; *McLean v. Arkansas*, 211 U. S. 539, etc.

Here the regulation is of unemployment relief, not health, safety, morals in a particular work group. "The classification bears no reasonable or just relation to the intended result of the legislation"*

The problem considered, the number and weeks limitation of the Alabama Act can not be sustained.

**Louisville G & E Co. v. Coleman*, 277 U. S. at p. 39.

PART II

THE ALABAMA LAW IN ITS RELATION TO TITLES III AND IX OF THE FEDERAL ACT IS VIOLATIVE OF THE ORGANIC DUAL BASIS OF THE AMERICAN SYSTEM AND VOID.

We quoted the assertion, conclusive here, of the Alabama Supreme Court that the Alabama Act is expressly, functionally and intrinsically dependent upon the Federal Act; that its purpose is abortive without the Federal Act, that the tax-credit provisions of the Federal Act stood "in the nature of a penalty" against failure or refusal by the State to adopt the Act; that "the Alabama Act ties into it (Federal Social Security Act) and forms a part of a nationwide economic scheme *provided for by the Federal Act,*" that the Alabama Act is tied into the Federal Act "in a way necessary for it to have an effective field of beneficial operation."

These expressions by the Alabama Court are but judicial declarations of the express and intrinsic acceptance of the Federal Act subject to all of its mandates, terms and conditions by the Alabama Act, viz: "to coordinate this State and its institutions with the plans and purposes of the Federal Government as expressed in its said Security Act"—Sec. 10 (e), Acts 1935, at p. 962.

This statutory and judicial declaration is accompanied by conformity at every point and in every detail with the Federal Act.

The judicial interpretations of the State Act and its organic relation to the Federal Act must, of course, be accepted here "as if the meaning had been specifically expressed in the enactment." *Morehead v. Tipaldo,* 298 U. S. 587; *West Coast Hotel Co. v. Parrish, supra.*

We proceed, accordingly, to examine the validity of the State Act, on its admitted and adjudicated relation of complete and unconditional acceptance of the Federal Act in all of its terms, conditions and implications:

The basic facts relied upon to show the functional and intrinsic dependence of the State Act upon the Federal Act and (if the latter were valid) upon continuing administrative approval and financial support of the Federal Act and Board, as well as the sweeping delegation of funtion, include in addition to the express statutory acknowledgement above quoted, the following:

1) The Federal Act was intentionally and structurally devised, publicly proclaimed by the President and the Committees of Congress in its formulation and enactment, and by the Federal Social Security Board in administering it, as the foundation unit in a Federal-State system of unemployment insurance, the success of which depended upon the adoption of approved State Acts.

2) The tax-credit device was intended to exert economic pressure upon all states for the adoption of unemployment insurance Acts in form and substance comply with the Federal pattern, which dealt with matters of material legislative discretion and importance.

3) This device is recognized by the Alabama Court as in the nature of a penalty for not complying and has obviously that character.

4) A basic objective of the Federal Act was to obtain control and use by the Federal Treasury of the State Unemployment Compensation funds, as open account loans or for investment in Federal securities, as the Secretary of the Treasury might in his sole discretion de-

termine. Sec. 303 (a) (4); Sec. 904 (a). At the present time the Treasury is taking into open account about $40,000,000 per month from this source against the current (February, 1937) monthly excess of expenditures over receipts of $300,000,000.

5) The Federal proposal and State acceptance withholds and freezes, by necessary consequence of the provisions of both Acts, and the contract nature of the deposit, the State funds in open account in the Federal treasury, for a minimum period of two years before any withdrawal by the State is permitted, and permanently thereafter except as withdrawals may be made for the sole purpose of payment of benefits [Title III, Sec. 303 (3) (5)].*

6) The objective of Titles III and IX of the Federal Act set out a plurality of express conditions to which State systems must conform in order to obtain the administrative aid of the Federal Board (carrying Federal approval and therefore control of administration by the

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*Obviously the State could not successfully maintain a suit for the recovery of its own fund except pursuant to its administrative distribution upon benefits.

(The open account, I. O. U., or due bill nature of use authorized by the Secretary of the Treasury in the soaring Federal deficit now cracking the price of Federal securities and threatening the solvency of investing institutions makes it certain that no State has the right to commit itself firmly in this manner as to the use of moneys held by the State for an alleged public purpose.

The Supreme Court of California, confronted with a requirement of its constitution prohibiting the withdrawal of public moneys from the State, weaseled its way by assuming that the Secretary of the Treasury would arrange for the deposit of California's contribution in Federal depositaries in California—and did not consider the question of surrender of sovereignty and responsibility here involved. *Gillum v. Johnson*, Pac. (2d) (Cal.).

States) and in order to qualify state employers for the credits uner Title IX (Sections 902, 909, 910.)

7) The State Act repealed all appropriation for maintenance or administration [Sec. 17 (Acts 1935, at p. 967), as amended (Acts 1936, at p. 180)] and left the administration of that Act wholly dependent upon the discretion of the Federal Board in making allowances under Title III, Sec. 302 (a).*

8) Sections 909 and 910 of the Federal Act penalize for five years the allowance of merit-rating under any State Act, in that no credit for improved rating is allowable under Sec. 909 until after 1937 or under 910 until after 1941 [three years after beginning of benefits, which can not begin before two years—Sec. 903 (a) (2)]. Yielding to this situation the State Act abandons all merit rating until 1941, a circumstance which is argued, *supra*, as plainly arbitrary; none the less so because compelled by the Federal Act.

9) Formal federal approval of the State Act by the Federal Board is necessary**

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*Because of this dependence, all salaries and organization of the State Commission and its entire budget and personnel are dependent upon the approval of the Federal Board. The record on this appeal by the State from a final decree adjudging the State Act invalid could not be printed by Appellants (the Attorney General and State Commission) until on March 25th the consent of the Federal Social Security Board was obtained to print the record, after initial refusal followed by several weeks of importunity by the Attorney General of Alabama in the effort to comply with the understanding that this case and No. 724 would be appealed by the losing party to expedite prompt determination of the questions involved.

**Senator Glass' caustic characterization of this audacious process was stated in his address of March 30 in these words:

"With federal regulatory bodies in every community of the states and federal bureaus in Washington bursting the bounds of marble palaces and

10) The subjection of the State Act to express, functional and intrinsic dependence upon the *validity* of the Federal Titles. Acts 1936, at p. 180 (Sec. 5½); Acts 1936, at p. 228-9.

11) The Federal Act is an offer. The State Act an acceptance. The State Act has been approved by the Federal Board. The offer, the acceptance and the approval constitute a contractual subordination by the State of its sovereign processes to the Federal Government.

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overflowing into business houses and private homes, and with the states required supinely to submit their legislative statutes to the approval of bureaucratic boards here before they can get back a pittance of the prodigious sums from the pockets of their people in the form of taxes, state rights, as well as the security and independence of private enterprise, are fast disappearing."

They were provoked by the argument on behalf of the Attorney General and others that Thomas Jefferson's historic dissatisfaction with the Supreme Court was a precedent for the pending effort to extend without limit the power of Congress and the Executive over all local affairs and concerns deemed in their aggregate or statistical effect to be a matter of national economy. One of the latest and now most timely expressions of Thomas Jefferson is the following:

"Take together the decisions of the Federal court, the doctrines of the President, and the misconstructions of the constitutional compact acted on by the legislature of the federal branch, and it is but too evident, that the three ruling branches of that department are in combination to strip their colleagues, the State authorities, of the powers reserved to them, and to exercise themselves all functions foreign and domestic.

Under the power to regulate commerce, they assume indefinitely that also over agriculture and manufactures, and call it regulation to take the earnings of one of these branches of industry, and that, too, the most depressed, and put them into the pockets of the other, the most flourishing of all.

Under the authority to establish post roads, they claim that of cutting down mountains for the construction of roads, of digging canals, and aided by a little sophistry on the words 'general welfare,' a right to do, not only the acts to effect that, which are specifically enumerated and permitted, but whatsoever they shall think or pretend will be for the general welfare.

And what is our resource for the preservation of the Constitution? Reason and argument? You might as well reason and argue with the marble columns encircling them.

The representatives chosen by ourselves? They are joined in the combination, some from incorrect views of government, some from corrupt ones, sufficient voting together to outnumber the sound parts; and with majorities only of one, two, or three, bold enough to go forward in defiance.

Are we then to *stand to our arms*, with the hot-headed Georgian? No.

12) We quote in the margin* the aggressive warning of the Federal Board that if the Legislature of Alabama adopted H. B. 78—12-4-36 (Dominick), providing for the holding of the contributions to the Alabama Fund in that State Treasury until determination of the validity of the Act, the Federal Board would withdraw its approval of the Alabama Act for certification of credits under Title IX or grants under Title III. This threatened action would have disorganized or terminated the administration of the State law and subjected the employers of Alabama to a loss of credit on the Federal tax for 1936 alone approximating $2,000,000.

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*On December 4, 1936, there was introduced in the Alabama Legislature and referred to the Committee on Judiciary, House Bill 78, by Mr. Dominick of Tuscaloosa. This bill proposed to amend Section 4 (d) of the Alabama Act so as to provide for the temporary impounding of the contributions paid into the fund in Alabama within

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That must be the last resource, not to be thought of until much longer and greater sufferings.

If every infraction of a compact of so many parties is to be resisted at once, as a dissolution of it, none can ever be formed which would last one year. We must have patience and longer endurance then with our brethren while under delusion; give them time for reflection and experience of consequences; keep ourselves in a situation to profit by the chapter of accidents; and separate from our companions only when the sole alternatives left, are the dissolution of our Union with them, or submission to a government without limitation of powers.

Between these two evils, when we must make a choice, there can be no hesitation. But in the meanwhile, the States should be watchful to note every material usurpation on their rights; to denounce them as they occur in the most peremptory terms; to protest against them as wrongs to which our present submission shall be considered, not as acknowledgements or precedents of right, but as a temporary yielding to the lesser evil, until their accumulation shall overweigh that of separation.

I would go still further, and give to the federal member, by a regular amendment of the Constitution, a right to make roads and canals of inter communciation between the States, providing sufficiently against corrupt practices in Congress, (log-rolling, etc.,) by declaring that the federal proportion of each State of the moneys so employed, shall be in works within the State, or elsewhere with its consent, and with a due *salvo* of jurisdiction. This is the course which I think safest and best as yet."

—To William B. Giles, Dec. 26, 1825. Definitive Ed. 1907, Vol. XVI, p. 146.

(a)

A State may not contract or delegate away its legislative power nor any function of its sovereignty, even to the Federal government; nor lawfully connive at the assumption of non-federal powers by the latter.

Whether the above stated principle be based upon the illegality of any contract or attempt on part of the Federal Government to violate the Ninth and Tenth Amendments, undertaken or connived at by the State; or whether the conclusion rests upon Art. 4, Sec. 4, guaranteeing a republican form of State government carrying the traditional conceptions of state sovereignty in our dual system, or whether it rests, like the immunity of governmental agencies, functions and processes from taxation or interference by the other government, upon the comity necessary to that dual system, the State may not, consistently with the Constitution, contract, delegate, barter

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the State until the determination of the constitutionality of the State and Federal Acts. Before this bill could be reported out by the Committee, its author was handed the following telegram from the Director of Unemployment Compensation of the Federal Social Security Board:

"WESTERN UNION

"BM 1 84 38 GOVT 2 EXTRA PNA PENSACOLA FLO
DEC 9 PM 2 38

JACOB L KAUFMAN DIRECTOR UNEMPLOYMENT
COMPENSATION COMMISSION 623 ADAMS AVE
MONTGOMERY ALA

ADOPTION OF PROPOSED AMENDMENT TO SECTION FOUR DEE ALABAMA COMPENSATION LAW HOUSE BILL NUMBER SEVENTY EIGHT DASH II WILL PREVENT CERTIFICATION ALABAMA LAW FOR TAX CREDIT AND GRANTS UNDER TITLES THREE AND NINE SOCIAL SECURITY ACT

WAGENET DIRECTOR WASHN D C"

away or abandon any of its sovereign powers, such as the legislative power or other function of its sovereignty or public responsibility.

The Supreme Court of Alabama has in the past fully recognized this inhibition, but we are in doubt where it now finds itself, as we are unable to follow the thread quoted below to any conclusion other than that the State may not delegate its legislative decision to another State but may to Congress. That seems so plain a solecism that we hesitate to interpret the language:

> "The contention is that we cannot allow other governmental jurisdictions to legislate for us. Whether that principle would apply to congressional legislation, since Congress can legislate in an effective way in Alabama, we need not here declare. We can not make our legislation dependent upon that of other States. * * * We have often held that an act complete in itself may be made to depend upon some contingency for its operation. * * * Such contingency cannot be the legislative enactments or administrative regulations of another state. * * * We see no reason why an Alabama statute may not be made to depend upon the validity of an existing act of Congress into which it is tied * * *"—Opinion of Supreme Court of Alabama in Beeland case.

The contention here as to abdication of sovereignty goes far and basically beyond the narrow question of dependence of the State statute upon the contingency or fact (viz., validity or existence) of the Federal Act, adjudicated by the Alabama Court; a conclusion we do not attack.

The point made here is that if the Federal Act could be held valid, the State has by the admitted tie-in, accept-

ance in toto and dependence, abdicated its sovereign responsibility and legislative discretion.

We assert here that as a matter of Federal law, no such delegation or abdication as is accomplished by this Act is permissible for the Federal Government to seek or exercise or for the State to grant.

The General Principle

This principle is firmly established in the nature of our dual system:

In *Texas v. White*, 7 Wall. 700, 725, the Court said:

> "It may not be unreasonably said that the preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National government."

In *Collector v. Day*, 11 Wall. 113, 125, the Court stated:

> "It would seem to follow, as a reasonable, if not a necessary consequence, that the means and instrumentalities employed for carrying on the operations of their governments, for preserving their existence, and fulfilling the high and responsible duties assigned to them in the Constitution, should be left free and unimpaired; should not be liable to be crippled, much less defeated by the taxing power of another government, which power acknowledges no limits but the will of the legislative body imposing the tax."

These principles were recognized and applied in *Ashton v. Cameron County etc. Dist.*, 298 U. S. 513, in which the Court held that the States may not avoid their constitutional

responsibilities by granting any permission necessary to enable Congress so to do for them:

> "Neither consent nor submission by the States can enlarge the powers of Congress. None can exist except those which are granted. U. S. v. Butler, 297 U. S. 1. The sovereignty of the state essential to its proper functioning under the Federal Constitution cannot be surrendered; it cannot be taken away by any form of legislation. See U. S. v. Constantine, 296 U. S. 287.
>
> "Like any sovereignty, a State may voluntarily consent to be sued; may permit actions against her political subdivisions to enforce their obligations. Such proceedings against these subdivisions have often been entertained in federal courts. But nothing in this tends to support the view that the Federal Government, acting under the bankruptcy clause, may impose its will and impair State powers—pass laws inconsistent with the idea of sovereignty. (p. 531).
>
> * * * *
>
> "The difficulties arising out of our dual form of government, and the opportunities for differing opinions concerning the relative rights of State and National Governments are many; but for a very long time this court has steadfastly adhered to the doctrine that the taxing power of Congress does not extend to the States or their political subdivisions. The same basic reasoning which leads to that conclusion, we think, requires like limitation upon the power which springs from the bankruptcy clause" (p. 532).

We do not understand that the conclusions of the majority met with any dissent insofar as they asserted that the sovereignty and legislative responsibility of the States could not be contractually abandoned and that the

constitutional powers of Congress could not be enlarged by consent or agreement.

There is, of course, a sharp distinction between the contractual delegation or fixed abandonment of a sovereign trust or responsibility, such as the police power or the responsibility for public funds, and the waiver expressly or by acquiescence of immunities not necessary to the preservation of the Federal framework.

Familiar instances of acquiescence involving no transfer or contraction of state authority relate to taxation by one or the other governments of items which, upon objection, would be immune under *McCulloch v. Maryland,* 4 Wheat. 316; also affirmative consent by Congress or consent by inaction, to the exercise of local, not Federal, power in relation to matters which Congress could withhold or withdraw from State action under the Commerce Clause. The State in such cases does not act by virtue of any delegation of power. "In such cases consent may preserve a Federal balance otherwise threatened with derangement" (Cardozo, J. dissenting in *Ashton v. Cameron County, supra,* 298 U. S. at p. 540).

In this case, the appellee and employers singled out to bear alone the public burden of unemployment relief, conceive that the function of legislation upon the subject, actual freedom to deal with the huge fund, actual freedom to provide for merit rating, are sovereign and non-delegable functions and responsibilities, as to which the State itself under our Federal system rests under "the duty of the parens patriae to keep faith with those who have put their trust in the parental power"—*Hopkins Fed. S. & L. Asso. v. Cleary,* 296 U. S. at p. 339.

In the early case of *Pollard v. Hagan,* 3 How. 212 (1845) the Court pointed out the inappropriateness under

the Constitution of grants by the State government to the Federal government of any function of state sovereignty. Speaking of the States' jurisdiction over the navigable waters of the State (subject only to the commerce clause); the court said:

> "And if an express stipulation had been inserted in the agreement, granting the municipal right of sovereignty and eminent domain to the United States, such stipulation would have been void and inoperative; because, the United States have no constitutional capacity to exercise municipal jurisdiction, sovereignty, or eminent domain, within the limits of a State or elsewhere, except in the cases in which it is expressly granted" (p. 223).

And again,

> "No compact that might be made between her (Alabama) and the United States could enlarge or diminish these rights"—at p. 229.

Familiar illustrations of this principle are:

L. & N. R. Co. v. Mottley, 219 U. S. 467,

Norman v. B. & O., 294 U. S. 240.

While State acts purporting to punish violations of NRA have apparently been invalidated because of obvious violations of the State constitution (*Darweger v. Staats* (1935), 196 N. E. 61, 267 N. Y. 290) such delegations of legislative or other sovereign function to the federal government are squarely within the identical principle, which prohibits any such assumption of State authority or delegation of its own legislative power by the Federal Government.

Knickerbocker Ice Co. v. Stewart, 253 U. S. 149, 164
Panama Refining Co. v. Ryan, 293 U. S. 388
Schechter Poultry Co. v. U. S., 295 U. S. 495
License Tax Cases, 5 Wall. 462
U .S. v. Constantine, 296 U. S. 287.

(b)

The usurpation of State function intrinsic in the Federal Act and the illegal acquiescence by the State by the adoption of the State Act are destructive of the Federal balance and void.

The summary appearing earlier in this title set out certain of the important respects in which the State by "coordinating itself and its institutions with the plans and purposes of the Federal Government as expressed in its said Security Act" has effectively impaired its legislative freedom of action in respect to unemployment relief and the custody of public funds.

The reasons why this surrender has been made are catalogued by the Alabama Court and are conspicuously inadequate to sustain the action. That court asserted:

> "It would be useless, perhaps, for one state to try to effect economic security in respect to a situation which knows no state boundaries * * *
>
> "* * * an Alabama statute * * tied (into an act of Congress) in a way necessary for it (the Alabama Act) to have an effective field of beneficial operation * * * "The Alabama Act is dependent upon the constitutionality of the Federal Act * * * ,

If the scheme can not function without nation-wide acceptance by the States, no one can fail to recognize that

the Federal Act does supply, as its authors and Congress intend by the tax device that it shall supply, the pressure to induce the States to adopt the State units.

We discuss later, under the title dealing directly with the Federal Act, the nature of the penalty device. Here it is sufficient to point out that the Alabama Court recognizes, in the final paragraph of the majority opinion, that the only expedient to avoid the payment by the State's employers of the full amount of the tax to the Federal government (without unemployment compensation) is to enact a "satisfactory" law:

> "There is therefore something in the nature of a penalty for not doing so."

The Court added its view that this fact of penalty in the Federal Act does not invalidate it, "if the whole plan is within Congressional power;" but it is not and can not be within Congressional power to induce and to assume the surrender of State sovereignty implicit in the State and Federal Acts and their administration.

The State Act is not only an act of unlawful yielding to an unlawful Federal penalty, but an unlawful contraction of the State's legislative discretion and abandonment of control of the State's public funds for fixed (2 years) and practically permanent handling and use by the Federal Government.

In consideration of the nature and purpose of the penalty, it is to be noted that the United States as *amicus curiae* in the Court below argued the suasion of the tax penalty device in these words:

> "To make it possible for States to adopt their own unemployment compensation laws Congress

provided in Title IX of its act for a credit of 90% against the Federal tax for contributions made to state funds created under state laws."—p. 7, per Robert H. Jackson, Assistant Attorney General.

In short, Congress permits, makes it possible, for the State to adopt an unemployment compensation law! For Congress by a penalty device to make possible that which is none of its business, is in fact, on this record, to compel.

The question whether the Federal Act is itself invalidated by the penalty device is a federal question, but the question whether the device was regarded by the State in the enactment of the State Act as a penalty is a question we consider concluded by the opinion of the Alabama Court.

Here regarded solely from the standpoint of the State Act, we assert that the adoption of the State Act under and subject to any such conditions, and subject to the dominant control stated, and as an expedient to avoid punitive consequences to its citizens, is obviously inconsistent with the sovereignty of the State.

All of the surrenders of sovereignty and contractual responses and submissions catalogued above work a violation of the dual system of the Constitution, either by direct abandonment by the State of its own sovereign powers or by statutory connivance by the State in the assumption of powers by the Federal Government which directly violate the Tenth Amendment. The conclusion in either or all events is that the State Act, which works that result, is void.

PART III.

TITLES III AND IX OF THE FEDERAL SOCIAL SECURITY ACT

Titles III and IX of the Federal Social Security Act constitute a scheme for the control of functions beyond the Constitutional powers of the Federal Government and are void.

(a)

Should the Alabama Act be considered otherwise valid and effective as to Appellee, it is indispensable to determine whether it is operative in view of its express, functional and intrinsic dependence upon the validity of Titles III and IX of the Federal Social Security Act.

(b)

The Social Security Act was conceived and finally drafted and its legislative purpose fully proclaimed before recent controlling decisions of this Court adverse to the use of the tax-credit device to induce local action.

The Federal Social Security Act was approved August 14, 1935, five months before the decision in *U. S. v. Butler*, 297 U. S. 1 (January 6, 1936) warned Congress against ostensible taxes constituting a direct part in a system of rewards to induce results beyond Federal Power; and also before the decision in the *Coal Code Case* (*Carter v. Carter Coal Co.* 298 U. S. 238, May 18, 1936), in which the Court condemned an Act built, as here, upon an ostensible tax (with

credit for compliance with stipulated standards relating to production) as a penalty to force compliance with conditions not justified under the commerce clause and therefore void. The Bituminous Coal Conservation Act, with this tax-credit device, was gestating at the time of the tax-credit device of Title IX and was enacted into law on August 30, 1935, fourteen days after Title IX received executive approval.

The Railroad Retirement Case, 295 U. S. 330 (May 6, 1935), condemning as non-federal and in violation of the Fifth Amendment a compulsory pension and retirement pool for carriers subject to the Interstate Commerce Act, was decided after all organic steps in the formulation of the Social Security Act, although before final passage.

These organic steps were:

—The President's initial message on the subject of social security, June 8, 1934.

—Report of President's Committee on Economic Security transmitted to Congress with the President's Message of January 17, 1935, H. Doc. No. 81, 74th Congress, 1st Session.

—Draft and introduction of H. R. 7260 and favorable report by *House* April 5, 1935 (Report No. 615, 74th Cong., 1st Sess.), and by *Senate* May 20, 1935 (Report No. 628, 74th Cong., 1st Sess.)

All before the decisive cases above stated.

These documents, referred to briefly below, are in themselves conclusive that the theory and structure of the Act were conceived without reference to the principles announced in the three cases cited.

The President's Message was admittedly in discharge of his responsibility under Art. 2, Sec. 3 of the Constitu-

tion to recommend to the Congress "their consideration of such measures as he shall judge necessary and expedient." That message, accompanied by the report in full, summarized the recommendation of the Committee and constitutes an organic factor in the interpretation of the resultant measure.

> "Federal action is necessary to and conditioned upon the actions of States. . . . In order that the necessary State action may be taken promptly it is important that the Federal Government proceed speedily. . . ."

With specific reference to the subject—not of taxation but of unemployment compensation—the Message stated:

> I recommend the following types of legislation looking to economic security:
>
> "(1) Unemployment compensation.
>
> * * *
>
> "With respect to unemployment compensation, I have concluded that the most practical proposal is the levy of a uniform Federal payroll tax, 90 percent of which should be allowed as an offset to employers contributing under a compulsory State unemployment compensation act. The purpose of this is to afford a requirement of a reasonably uniform character for all States cooperating with the Federal Government and to promote and encourage the passage of unemployment compensation laws in the States. The 10 percent not thus offset should be used to cover the costs of Federal and State administration of this broad system. Thus, States will largely administer unemployment compensation, assisted and guided by the Federal Government." (Message, p vi).

The report of the Committee attached to the Message but elaborates this Executive statement with the statement that the purpose of the tax-credit device was to remove "the unfair competitive advantage that employers operating in States which have failed to adopt a compensation system" etc (p. 3, 4).

That the provisions of the Federal Bill were regarded as constituting *an unemployment compensation system* can not with intellectual integrity be denied. (Senate Report, p. 16). Who supposes that the President had anything else in mind? Are his analyses false pretenses? The administrative interpretation of the Act by the Federal Social Security Board is that "the entire plan of unemployment compensation is a co-operative Federal-State system."

So, the House Report, referring to the subject, not of taxation or revenue, but "unemployment compensation," opens the report on Titles III and IX with the statement that a method must be devised to deal with the problem, and that the bill "makes possible" State unemployment compensation systems (p. 7); that "Titles III and IX seek to encourage States to set up such systems *and to keep them from being handicapped if they do so*" (ib.); that the bill *permits* the States' discretion with respect to unemployment compensation laws. "Yet the Federal Government, under this bill, has important functions to perform in order to make it possible for the States to have unemployment insurance laws and to facilitate their operation" (ib., p. 9). *"It equalizes competitive conditions through the imposition of the employment excise tax provided for in Title IX"* (ib., p. 9). And that is the sole connection in which any mention is made of taxation in connection with those titles.

The Senate Report likewise (p. 10) dealt with Titles III and IX under the heading "Unemployment Compensation" and not taxation. Both reports discussed in detail the theory of unemployment compensation, to be made payable as of right and not on a needs basis.

The following excerpts from the Senate Report are sufficient to leave no question as to the design and purpose of the Act:

> "This bill does not set up a Federal unemployment compensation system. What it seeks to do is merely to make it possible for the State to establish unemployment compensation systems and to stimulate them to do so. This objective is carried out through grants-in-aid to the States (in title III) for the administration of unemployment compensation laws and through the imposition of a uniform pay-roll tax on employers (in title IX) against which a credit is allowed for contributions made by them to unemployment compensation funds set up pursuant to State law.
>
> "The rate of the Federal tax is 1 per cent for the year 1936, 2 percent for 1937, and 3 percent in 1938 and thereafter. No tax will actually be payable, however, until 1937. Against the tax a credit is allowed up to 90 percent of the tax for contributions to State unemployment compensation funds, which are established under laws which meet the conditions prescribed in section 903. * * *
>
> "This tax offset device is modeled after the provision in the Federal estate-tax law, under which a credit is allowed up to 80 percent of the Federal tax of amounts paid under State inheritance-tax laws. With a uniform tax and this offset device, employers in all States will be put in an equal competitive position. No State can gain any advantage through fail-

ing to establish an unemployment compensation system. This provision will equalize competitive conditions and thus enable States to enact unemployment compensation laws without handicapping their industries.

These frank recognitions of the inseparable relation between Titles III and IX and their common purpose to induce state action were delivered at a time when it was confidently believed that form was dominant over purpose and that the form of a tax, with or plus an appropriation, could reach any objective.

This attitude was induced or the same state of mind illustrated by the extraordinary opinion rendered by the present Attorney General of the United States to the Senate Committee while the bill was under consideration, to the effect that:

> " * * * in passing upon the validity of a statute which on its face, purports to be a tax measure, the courts will not consider the question whether the motive of the legislative body was some other than that to raise revenue. * * *
>
> "It necessarily follows that the fact that the taxes sought to be imposed by the Social Security Bill may constitute an inherent part of a legislative scheme for old age benefits and unemployment insurance, in no way detracts from their validity."—Con. Rec. Vol. 79, Part 5, Col. 2, line 42, p. 5782.

Where it is plain from the face of an Act of Congress, its necessary and proximate effect, or from the legislative history of the statute that its dominant purpose is to accomplish objectives beyond the power of Congress by means of a tax device, with credit for yielding to con-

ditions imposed, the statute can not be sustained although the statute may in fact produce revenue payable into the general treasury.

McCulloch v. Maryland, 4 Wheat. 316, 423 (1819);
Veazie Bank v. Fenno, 8 Wall. 533, 541;
Pollock v. Farmers Loan & Trust Co., 157 U. S. 429;
Hammer v. Dagenhart, 247 U. S. 251 (1918);
Bailey v. Drexel Furniture Co., 259 U. S. 20 (1922);
Hill v. Wallace, 259 U. S. 44 (1921);
Chastleton Corp. v. Sinclair, 264 U. S. 543 (1924);
Linder v. U. S., 268 U. S. 5 (1925);
Trusler v. Crooks, 269 U. S. 475 (1926);
United States v. One Ford Coupe, 272 U. S. 321 (1926);
Magnano Co. v. Hamilton, 292 U. S. 40 (1934);
Railroad Retirement Board v. Alton Railroad, 295 U. S. 330;
United States v. Butler, 297 U. S. 1.

The proposition is no longer debatable, that neither the taxing power nor any other power of the Federal government can be used as a ~~driver~~ device to accomplish non-federal aims, where those aims are judicially discernible.

(c)

The dominant purpose, characteristic and effect of the tax-rebate device of Title IX is manifestly coercive to force the establishment of unemployment insurance systems within all the States, participated in and in substantial respects controlled by the Federal Government.

1) The tax-rebate device violates the Fifth and Tenth Amendment and can not be split in parts, as the tax plus the

credit constitute the effective means to accomplish the coercive result, wholly non-federal in character. The portion of the so-called tax designed to equalize production conditions throughout the United States does not have revenue for its primary objective, since the purpose of Titles III and IX succeed only where the credit is claimed and the revenue is lost, a phase documented below.

Railroad Retirement Board v. Alton R. R., 295 U. S. 330;
Carter Coal Company v. Carter, 298 U. S. 238

2) From the standpoint of federal revenue and federal powers the credit device has no reasonable relation to the taxing power, since it operates according to arbitrary conditions and with a discrimination wholly unsupported by any rational system of classification *based on federal revenue as an objective.*

The credit device is well related to a system of unemployment insurance but not at all to the collection of revenue.

Linder v. United States, supra.

3) That the combination of tax and credit is coercive in purpose and result is no longer open to argument.

Carter v. Carter Coal Co., supra;
U. S. v. Butler, supra.

4) Of course, the social welfare of employees in private business through compulsory unemployment insurance is no function of the Federal Government.

Railroad Retirement Board v. Alton R. R., supra;
Carter v. Carter Coal Co., supra.

5) Congress has no power to draw to the federal treasury the compensation funds of a State, nor to administer or invest them under any such extraordinary delegation of power as is required by the basic provisions of the Federal Act and yielded by the State.

Knickerbocker Ice Co. v. Stewart, 253 U. S. 149;
Ashton v. Cameron County, Supra.

6) Nor can the federal government use its processes to enforce or supplement the enforcement of State laws.

Constantine's Case, 296 U. S. 568, 572.

(d)

The Credits allowable under Title IX for good conduct under a State law are conclusive evidence that the dominant purpose of the title is not revenue but the establishment of unemployment insurance systems within the States.

The credit and additional credit provisions have no possible relation to a true revenue measure. They have a direct and logical relation to the unemployment insurance system. They are obviously inseparable from the tax, since it is the device of the tax plus credit that brings into existence the State units without which the stated objectives of Titles III and IX would fail of their organic purposes.

The function of these credits is seared in the record beyond pretense or duplicity.

With reference to the base credit allowed by Sec. 902 and the additional credits for good behavior (merit rat-

ing) the Message of the President (transmitting the report of his Committee on Economic Security) asserted:

> "Against the tax imposed in the Federal law, a credit, up to 90 percent of the tax, should be allowed for the money the employer has paid to the proper State authority as contributions for unemployment-compensation purposes pursuant to State law. *These credits, however, should be permitted only if the State is cooperating with the Federal Government in the administration of unemployment compensation,* expending the money raised solely for benefits, and is depositing all contributions as collected in an unemployment trust fund in the United States Treasury, as hereafter recommended.
>
> "If a State, to encourage stabilization of employment, * * * allows lower rates of contributions to employers not having such individual accounts on the basis of their favorable experience, an additional credit beyond the amount contributed in a particular year may be granted in the Federal act." (H. Doc. No. 81, 74th Cong., 1st Sess., p. 15) (Emphasis ours).

This provision, accordingly, related solely to unemployment insurance and wholly unrelated to taxation (*Linder v. United States, supra*), stamps this statute for what it is, a statute for the administration of a Federal-State unemployment compensation system.

(e)

The report of the President's Committee on Economic Security which determined the form and substance of the Act, accompanying the Message of January 17, 1936, leaves no doubt possible as to the dominant purpose and rationale of Title IX, as an unemployment compensation and not a tax measure.

We do not believe that it will be possible for counsel representing the Government of the United States in a cause in which a taxpayer claims sanctuary under the Constitution before this Court to pretend that the dominant objective of Title IX is not unemployment compensation rather than taxation or to argue to this Court that the tax-credit device is in fact a true tax.

These quotations from the President's Message (Report of Committee: supra) are conclusive:

> "We believe that the States should administer unemployment compensation, assisted and guided by the Federal Government. We recommend as essential the imposition of a uniform pay-roll tax against which credits shall be allowed to industries in States that shall have passed unemployment-compensation laws. Through such a uniform pay-roll tax it will be possible to remove the unfair competitive advantage that employers operating in States which have failed to adopt a compensation system enjoy over employers operating in States which give such protection to their wage earners.
>
> "We believe also that it is essential that the Federal Government assume responsibility for safeguarding, investing, and liquidating all reserve funds, in order that these reserves may be utilized to pro-

mote economic stability and to avoid dangers inherent in their uncontrolled investment and liquidation. We believe, further, that the Federal act should require high administrative standards, but should leave wide latitude to the States in other respects, as we deem varied experience necessary with particular provisions of unemployment compensation laws in order to conclude what types are most practicable in this country." (pp. 3-4).

Now, wide latitude permissive from the Government is not the complete and sovereign responsibility mandated by the Constitution.

> "Some European unemployment insurance systems are voluntary, but the experience everywhere has been that compulsory coverage is necessary to include a majority of the industrial workers." (ib., p. 9)

The Alabama system includes less than 27% of the workers of the State.

The reason why a needs or means test was not included in the standard act promoted by the Government thus appears:

> "After an unemployed worker has exhausted his right to benefits, European systems generally permit him to draw extended benefits, on a means-test basis, for additional periods, the entire cost of which is borne by the government. As we have stated, such extended cash benefits seem to us far less desirable than work benefits and we recommend that an employee, after he has exhausted his contractual rights, be certified to the authorities in charge of the Federal-work program as entitled to a work benefit." (ib., p. 9).

"Unemployment compensation should permit such a worker, who becomes unemployed, to draw a cash benefit for a limited period during which there is expectation that he will soon be reemployed. This should be a contractual right not dependent on any means test." (ib., p. 11).

The extraordinary lack of any sense of inhibition in the Constitution reflected in the report and in the Act is made plain:

"Some economists urge that, instead of using a tax on pay rolls, unemployment compensation should be paid through Federal Government borrowings to be repaid hereafter out of other types of Federal taxes. Without expressing any judgment on that contention, we deem it desirable, at the present time, to employ a pay-roll tax for unemployment compensation, although it may be possible that experimentation under the proposed statute will show that at some time in the future a plan built upon the other alternative suggestion should be substituted, in whole or in part, for that which we are proposing." (ib., p. 12).

And so, the recommendation of the Message and the Committee translated directly into the statute as enacted, was for the time being, for a Federal-State system *insuring* uniformity, forcing disclaimer of vested rights and compelling reservation of right to repeal, so that the transition to an exclusive Federal system might be made easy. The concluding sentence in the following quotation is a complete demonstration of surrender of sovereignty involved in the articulation of State and Federal statutes so readily acknowledged by the Alabama Court:

"This background, it seems to us, is an important consideration in determining the type of unem-

ployment compensation legislation to be recommended. It clearly suggests the desirability of permitting considerable variation, so that we may learn through demonstration what is best. This we believe, can at this time best be secured under a cooperative Federal-State system, which permits variations in State laws but insures uniformity in respects in which uniformity is absolutely essential.

"A federally administered system of unemployment compensation is undoubtedly superior in some respects, particularly in relation to employees who move from State to State. This presents a problem involved in State administration which we do not at this time know how to solve, although we do not regard it as insoluble and recommend that it should be made one of the major subjects of study of the Federal administrative agency. We recognize also that in other respects State administration may develop marked inadequacies. Should these fears expressed by the champions of a federally administered system prove true, it is always possible by subsequent legislation to establish such a system. We recommend that it be expressly provided in the Federal act that all States must include in their statutes provisions to the effect that those acts shall not be deemed to create any vested interests preventing modification or repeal and that a similar reservation of power be made by the Federal Government. *Accordingly, the Congress can at any time increase the requirements which State laws must fulfill and may, if it sees fit, at some future time, substitute a federally administered system for the cooperative Federal-State system we recommend.* (Emphasis supplied). (ib., p. 13).

The Committee thereupon expressed the idea that *for the time being*, the Government leave the States with primary responsibility *for administration* but:

"Federal cooperation is essential, because the States cannot establish systems of unemployment compensation with reasonably favorable conditions unless there is assistance from the Federal Government. So long as there is danger that business in some States will gain a competitive advantage through failure of the State to enact an unemployment-compensation law, few such laws will be enacted. *This obstacle to State action can be removed only through the imposition by the Federal Government of a uniform tax (rate of contribution) on all employers throughout the country, so that no State will have an unfair advantage. We, therefore, recommend legislation which will impose a uniform Federal tax on pay rolls, with an offset permitted to any employer who contributes to an unemployment-insurance fund under a compulsory State law.*" (ib., p. 14). (Emphasis supplied.)

(f)

Not only does the Federal Act by Title IX coerce but by Title III it purchases the establishment and maintenance, subject to Federal approval, of State Compensation Systems and the custody and control of State funds.

That the Act both coerces and purchases is not to be doubted. We quote below the formal admission before the Court below by the brief for the Government that the Federal Act accomplishes direct participation as a result of the provisions for credit and the diversion of the State funds to the Federal treasury.

Coercion

The Supreme Court of Alabama has spoken for that state: "There is therefore something in the nature of a

penalty for not doing so." Beeland Case. The express, functional and intrinsic dependence of the State Act upon the Federal Titles is no less conclusive than the adjudication of dependence by the Alabama Court.

The national character of the coercion is established by the public declarations, State by State, which have accompanied the efforts of their legislative and executive authorities to escape the credit deadline of Title IX.

The following are representative illustrations of the nationwide recognition of the coercive effect of the tax-credit device and financial aid-control provisions of the Federal Act:

In his message of January 11, 1937, to the **Illinois** legislature, the Governor of that State said with reference to a state unemployment compensation act:

> "There is urgent reason for the consideration of the subject at this time. Failure on the part of our State of Illinois to enact a system of unemployment compensation, will divert from employees in this state to general federal governmental purposes many millions of dollars which would tide them over periods of future unemployment."

The statutes enacted by the States of Kentucky and Ohio respectively, contain the following declarations:

> "Whereas, it becomes necessary to enact an Unemployment Compensation Act in Kentucky before the expiration of the calendar year, 1936, in order to conserve to the citizens of the Commonwealth of Kentucky the benefits of the contributions exacted from Kentucky employers under the Social Security Act, passed by the United States Congress of 1935, an emergency is hereby declared to exist and this Act shall become a law and be effective upon its approval by the Governor."

Sec. 24 (Act. No.... (Senate Substitute for H.-B. 1) Special Session, approved Dec. 29, 1936.)—**Kentucky.**

"This act is enacted as a part of a national plan of unemployment compensation and social security, and for the purpose of assisting in the stabilization of employment conditions. The imposition of the contributions herein imposed upon Ohio industry alone without a corresponding tax imposed upon all industry in the United States would by the penalty upon Ohio industry, defeat the purposes of this act. Therefore this act shall remain in effect only so long as the excise tax upon employers of eight or more persons which is imposed by title IX of the social security act enacted by the congress of the Untied States shall remain and be in effect and operative."

Sec. 34 (House Bill No. 608, First Special Session, approved Dec. 17, 1936)—**Ohio.**

The State of **Texas** asserts an "emergency" to pass the law:

"The fact that Texas has no unemployment insurance system to supplement the Federal Social Security Program creates an emergency and an imperative public necessity requiring the suspension of the Constitutional Rule requiring bills to be read on three several days in each House, and the Rule is hereby suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted."

(Senate Bill No. 5, Third Special Session, approved October 27, 1936).

A standard form of cooperation appears in almost all of the Acts, viz:

"In the administration of this Act the Board shall cooperate to the fullest extent with the provisions of this Act with the Social Security Board, created by the Social Security Act, approved August 14, 1935, or any amendments thereto; * * * and shall comply with the regulations prescribed by the Social Security Board governing the expenditures of such sums as may be allotted and paid to this State under Title III of the Social Security Act * * *"

(Ch. 4, L. 1936, as amended by Ch. 125 (H. B. 124) L. 1937, **Indiana.**

Representative excerpts from the various state statutes showing the sweeping dependence of the State Acts.

In the event that Title IX of the Federal Social Security Act, or this Act, shall be declared by the courts to be unconstitutional, inoperative, or void, this act shall terminate and the excises col-

lected as herein provided, or any unexpected balance thereof, shall be returned to the employers and employees who have contributed threto, pro rata, under the direction of the board."

Sec. 26 (Ch. 12, Laws of 1936, as amended—**Idaho**).

"Should the Act or Acts of Congress under which the Federal Government contributes funds to the State for unemployment compensation be repealed or declared unconstitutional, so as to deprive this State or such fund, then the provisions of this Act shall immediately terminate."

Sec. 22 (Act. 768, Regular Session of 1936, approved June 6, 1936.—**South Carolina.**

An extended delineation of the Federal pressure proceeds from the State of **South Dakota** which, because of its length, we carry into the margin.*

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*Whereas, there have been or will be collected by the Federal Government, under the provisions of the National 'Social Security Act,' for the calendar year of 1936, from employers within the State of South Dakota, taxes in an amount exceeding Three Hundred and Fifty Thousand dollars, and

Whereas, The entire amount of the tax provided for under the provisions of that Act for the year 1936 must be paid into the Federal treasury for the general purposes of the Federal Government, without credit or deduction for payments into a state unemployment compensation fund, unless there shall have been enacted by the legislature of this State and approved by the Federal Social Security Board prior to December 31, 1936, a State 'Unemployment Compensation Law,' and

"Whereas, In the event that a State unemployment compensation law is so passed and approved prior to December 31, 1936, employers will be entitled to a credit up to ninety per cent (90%) of the Federal tax for contributions paid into a state unemployment compensation fund to be available for the payment of benefits to workers of this state unemployed through no fault of their own, and

"Whereas, the payment of such compensation to unemployed workers will do much to relieve economic insecurity brought about by unemployment and greatly limit the social consequences of poor relief assistance by the State and its political subdivisions.

"NOW, THEREFORE, an emergency is hereby declared to exist and this act is hereby found and declared to be necessary for

All Acts except New Jersey, New York, Pennsylvania, West Virginia, Wisconsin and Wyoming, in one form or another make application of the Acts depend upon the continuance in effect of the validity of Title IX of the Federal Social Security Act.

We have noted above (p. 67) the threat to discipline the State of Alabama if it enacted a law to withhold the State fund from the Federal Treasury pending determination of its validity. After this brought about the death in committee of H. B. No. 78 (Dominick), counsel representing sundry employers then came to Washington and in conference with representatives of the State obtained the approval of the Federal Social Security Board staff to an amendment which that Board would accept, dictated to the last word by that staff.* So much for coercion.

THE FACT OF PURCHASE OF STATE ACTION IS NO LESS MANIFEST

The credit allowable to employers of the State under Sections 908, 909 and 910 are in themselves bargains between

*H. B. 275—February, 1937, requiring the exactions paid into the State Fund to be returned and the State Commission liquidated on proclamation of the Governor that the tax imposed by Title IX of the Social Security Act, as amended, or any other federal tax against which contributions under this act may be credited has been amended or repealed by Congress or has been held unconstitutional by the Supreme Court of the United States, with the result that no portion of the contributions required by this act may be credited against such federal tax.

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the immediate support of the State Government and its existing public institutions and for the immediate preservation of the public peace, health and safety necessitating immediate action, and this act shall be in full force and effect from and after its passage and approval."

Sec. 25 (Senate Bill No. 5, Third Special Session, approved October 27, 1936.

the state and the Government for the State's acceptance of the Federal program.

That there is purchase of state compliance by the appropriation levied by Title III is no less assured.

The State of Alabama appropriates nothing for the administration of the State Act (Section 17, as amended). To March 31, 1937, the Federal Board had supervised the organization and administration of the State Act by the State authorities and paid to the State Board the sum of $201,187.28.*

To March 31, 1937, the Federal Board had issued to 37 States which had qualified, certificates under Title III aggregating $6,304,941.

These items, however, are small counters in the purchase price.

A large amount of the money paid into the Federal Treasury to March 27, 1937 ($165,111,311.68) to the credit of the unemployment Trust Fund represents credits on the Federal tax. The amount of such *credits* for Alabama alone in respect to the permanent average of 3% mandated by the State Act by 1941 is estimated at over $5,000,000 (R. p. 76, 86).

In respect to wages for the calendar year 1936 the House Committee (H. Rep. 628, May 20, 1935, 74th Cong., 1st Sess. p. 27) estimated the total tax (100%) at $247,000,000, increasing with steps in the rate to $826,000,000 for 1938 and reading $908,000,000 by 1950. The credit offered the industry of the states for compliance with the Federal plan is 90% of these vast annual amounts.

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*FEDERAL SOCIAL SECURITY BOARD—Information Service.

(g)

The objectives of the Federal Act, non-compliance with which is penalized by the tax-credit device of Title IX and compliance with which is purchased by the appropriations made pursuant to Title III, are beyond the orbit of Federal power.

The tax levied under Title IX being demonstrably a penalty rather than a true tax, and the aid extended by Title III being bartered for compliance with the scheme, the tax can be levied and the aid granted consistently with the Constitution only if the federal objective, the creation of state unemployment systems and the control of their reserves and administration, is within federal power and if, moreover, the devices used are consistent with the Fifth Amendment and do not destroy the equilibrium between State and Federal sovereignties mandated by our system.

Admittedly, if the tax-credit device is employed for the purpose of requiring the performance of some function which Congress may compel by penal provision, the tax-credit penalty employed in Title IX may be employed to stimulate or compel compliance. *Head Money Case, Carter v. Carter Coal Co., U. S. v. Constantine, supra.* Otherwise, not.

The question is, accordingly, whether the stated objectives, non-compliance with which is penalized by the tax-credit device and purchased by that device and by the appropriation, are within the Federal power.

APPELLEE HAS PROPERLY RAISED THE QUESTION

No question can exist here as to the right of Appellee to challenge in this suit the constitutional validity of the tax-

device under Title IX and of the appropriation-barter under Title III. The State, as interpreted by its Supreme Court in the *Beeland Case,* has agreed that the State Act must be declared inoperative if either Title III or Title IX be *in fact* invalid. That declaration was not conditioned in the opinion upon any technique as to justiciable remedy, although the remedy of Appellee for declaratory action under the state uniform declaratory judgments act is undoubted.*

Declaratory action in this case, in solution not indeed of a controversy with the Federal officials in respect to the matter, but with the State officials as to the question whether the State Act is operative, was appropriately sought below (Bill, Sec. 33, R. p. 24), as in the *Beeland Case,* in which there was, as here, request both for restraint as well as declaratory action.

As to the tax under Title IX, Appellee of course has a direct justiciable right to test validity either by suit to enjoin on a proper showing of special equities or, in any event, by way of suit for refund. In like manner, since admittedly the State statute under which appellee is taxed, is made operative only by virtue of the Federal appropriation which has been bartered for compliance by the State, if that barter between the State and the national government is in fact disruptive of the Federal balance and violative of the Tenth Amendment and proximately or necessarily results in an exaction upon Appellee, the latter's right to complain of such action by the State and its officials is plain under the State Declaratory Judgments act, for there an undoubted controversy exists as to the exaction and all of its elements and proximate causes. So, in both aspects neither *Massachusetts*

*Alabama Uniform Declatory Judgments Act. Acts 1935, p. 777.

v. Mellon nor *Florida v. Mellon* have bearing upon the question.

(h)

The right to establish or to control the form or administration of State unemployment compensation systems is not a lawful Federal function and can not be coerced or purchased by the Federal Government.

Titles III and IX, whether considered together, as they should be, or considered separately, are in active furtherance and continuing control of state unemployment compensation systems and are beyond lawful federal power.

The bare consideration of the function of a state unemployment compensation system makes plain its peculiarly local nature. As to the State of Alabama, its Supreme Court has decided that the subject is within the police power of the State. *Beeland Case, supra.* The system is either within the State's police power and therefore reserved under the Tenth Amendment or the State act is void under the 14th Amendment and under Sec. 23 of the State Constitution.

That the police power of the State runs far beyond the general subject of unemployment relief before it reaches the national frontier is subject to no doubt.

> *Brush v. United States,* 81 L. ed. (Adv.) 443;
> *Puget Sound L. & P. Co. v. Seattle,* 291 U. S. 619;
> *Jones v. Portland,* 245 U. S. 217.

This broad field of action being within the reservoir of State functions, is reserved, accordingly, from interference from the federal government not only by direct federal parti-

cipation, action, prohibition or penalties (*U. S. v. Constantine, Carter v. Carter Coal Co., Hopkins B. & L. v. Cleary, supra*), but also by the established doctrine of Federal balance which denies to the respective governments any form of taxation, regulation or action tending to impair the governmental functions, sovereignty or existence of the other. Even the expressly delegated Federal power over bankruptcy and incomes, from whatever source derived, yield to this implied negation, greater than any express power because upon it rests the Federal balance. *Ashton v. Cameron County Irrigation Dist., Brush v. United States, Hopkins B. & L. v. Cleary, supra.*

The most fundamental characteristic of the Constitution is the certainty that the police power is not within reach of Federal control, directly or indirectly, by taxation, prohibition, penalty or purchase; and can not be transferred or bartered to the Federal Government.

Thus, however obvious is the affirmative licensing of businesses as a traditional source of public revenue and however broad the power of taxation (limited as to direct taxes to the requirement for apportionment), that great Federal power carries no affirmative right to a federal licensee within State borders. *License Tax Case,* 5 Wall. 462.

We have shown above that the State, while it may in fact stand by and see its rights or its agencies usurped (*Casey v. Galli,* 94 U. S. 673, *Hopkins B. & L. Ass'n v. Cleary, supra*) may not impair its reserved sovereignty by grant or contract. *Pollard v. Hagan, supra;* Part II (a), *supra,* p. 67.

This Court compared the State in our national system, referring doubtless to some historic past, as parens patriae of its citizens charged with the duty of keeping faith with those who have put their trust in the parental powers (Hopkins

Case, *supra*, at p. 340). Here the parens patriae along with thirty six other like parentes patriae are yielding the heritage of their sovereignty and a constitution to the silent corruption of a bribe and a threat which their political agencies have neither the discernment nor the virility to oppose.

If the duplicity of the tax-credit device, plus appropriation-bribe control can draw to the federal government all powers which can thus be bribed or bought, and states can auction off their sovereignty on the block, the end of this republic as a constitutional democracy is at hand.

(i)

The design of the Act relied upon by the U. S. Attorney General below, to bring about the establishment of State unemployment insurance funds and their control and use by the Federal Government is not a valid reason for federal coercion or purchase of State compliance.

We have noted the contention by the United States as amicus curiae in the Court below to the effect that the scheme of the Federal Act includes intent and active participation to create a market for government securities and to control the amount and flow of credit.

The Government admitted *"direct participation by the Federal Government in one aspect of the State Law"*—viz., the conditions prescribed by Secs. 903 (a) (3) and 904; and asserts that in providing a market to that end "Congress has power to adopt such measures as are reasonably necessary to

the execution of its expressly delegated powers." The exact text of the argument is set out in the margin.*

Accordingly, the threatened accumulation of State funds is admittedly actuated by the Federal Government *as an active participant*. Any menace from general liquidation of the funds to meet depression demands upon them is no more tangibly related to a state fund than to depression demands upon the reserves of all business and all people.

Does the Attorney General contend that this economic circumstance confers upon the Federal Government control over every investing and mutual institution whose business is predicated upon reserve investments?

That undoubtedly is the implication, viz., that the government has the power to use any means deemed expedient to control credit.

The contention here confesses a design to invade not merely the reserved jurisdiction of the State but to seize its

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*"But Sections 903 (a) (3) represents something more than the other provisions, for it involved direct participation by the Federal Government in one aspect of the state law. Read together with Section 904, this section in effect provides that credit will be given for payments only under such state laws as stipulate that the funds collected must be invested in certain types of United States bonds. So stated it is obvious that this provision does not involve an arbitrary exercise of the Federal power. It is offering a bounty to those who create a market for government securities.

"Section 903 (a) (3) is designed not merely to encourage investments in government obligations but also to enable the Federal Government to continue its effective regulation of the amount and flow of credit. * * * The accumulation of unemployment compensation funds under the uncoordinated managements of the respective states and their investment in miscellaneous securities would obstruct federal regulation of the amount and flow of credit and lessen federal protection of the market for government bonds. Under these circumstances, Congress has power to adopt such measures as are reasonably necessary to the execution of its expressly delegated powers." (pp. 40-41).

official funds and subvert them to open account use by the Secretary of the Treasury.

That contention is ominous in all its bearings. We challenge it in its entirety.

We concede the broad power of Congress with relation to the selection of fiscal agencies and with relation to its money power, as illustrated by *McCulloch v. Maryland* (1819), 4 Wheat. 316, by the National Bank and the Bank Power, Cases, *First National Bank v. Fellows* (1917), 244 U. S. 416 *Smith v. Kansas City Title & Tr. Co.* (1921), 255 U. S. 180; *Federal Land Bank v. Priddy* (1935), 295 U. S. 229, and by the Gold Clause Cases, *Norman v. B. & O. Ry.*, 294 U. S. 240, and *Holyoke Water Power Co. v. American Writing Paper Co.*, 81 L. ed. (adv.) 383.

But there is nothing in Federal powers to justify the assertion of direct dominion over the savings and reserves of the people standing in whatever currency the Government establishes, except by the exercise of the right of eminent domain and consistently with the Fifth and Tenth Amendments. Certainly the Gold Clause Cases do not go so far. If that suggestion of the Government were sound, it would be idle to say that there is any limitation upon its powers or that there exists any dual system.

In Osborne v. Bank (1824), 9 Wheat., at p. 860, Chief Justice Marshall asserted five years after *McCulloch v. Maryland*:

> "It would be hard to contend that Congress had the power to authorize a bank to carry on a general business if that business were not necessary to the proper functioning of the bank for national purposes"

and in *Veazie Bank v. Fenno* (1869), 8 Wall. 533, the Court said:

> "There are, indeed, certain virtual limitations arising from the principles of the Constitution itself. It would undoubtedly be an abuse of the power if so exercised as to impair the separate existence and independent self-government of the States, or if exercised for ends inconsistent with the limited grants of power in the Constitution" (p. 541).

This Court, adverting to a quasi-public agency of the State, a building and loan association, denied the power of the Government to transform, that is, to control, such agencies under its implied powers, even in aid of a delegated purpose:

> "For the purpose of these cases we find it needless to consider whether Congress has the power to create building and loan associations and thereupon to invest them with corporate capacity. As to that we do not indicate an opinion either one way or the other. The critical question here is something very different. The critical question is whether along with such a power there goes the power also to put an end to corporations created by the states and turn them into different corporations created by the nation."—*Hopkins Fed. S. & L. Asso. v. Cleary, supra*, at p. 336.

This Court raised and queried the distinction between Federal powers relating to *banks of issue and deposit* and financial associations established and regulated by the State to encourage industry and thrift.*

Here we have not a bank of issue or deposit, not a quasi-agency of the state but the state itself; we have what the

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*"Distinctions may conceivably exist between the power of Congress in respect of banks of issue and deposit and its power in respect of associations to encourage industry and thrift." ib., at p. 343.

Supreme Court of Alabama tells us is the heart of the police power, unemployment relief, the control of which by the Federal Government would destroy the Federal balance.

The assumption by the U. S. Attorney General that these state funds in their prospective investment and liquidation menace federal credit or financing in such wise as to justify Federal dominion on the interference theory,* is a shocking disclosure of the intent of this administration to establish a totalitarian state in the central government or its executive.

When this Act was coerced (viz. "direct participation by the Federal Government", supra), there was no such fund in Alabama and its accumulation from that State results from the Federal Act. Wisconsin alone had an independent statute. Massachusetts and California had passed statutes in anticipation of the Federal Act then in definite form.

The number of states which have received certificates upon the Treasury for grants under Title III has increased to 37.

As of March 27, 1937, this design had resulted in the enforced contribution or loan by the States to the Treasury of $69,474,242.27 for March (fractional) alone, or at the rate of more than $800,000,000 a year, at the present minimum rates of tax. The total to that date for the fiscal year 1937 is $165,111,311.68. Of this total there has been "invested" $161,647,000 in Treasury IOU'S (termed special obligations under Sec. 904-b).

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*"The theory is that threatened interferences by the State with express Federal powers may be avoided.—*Minnesota Rate Cases* (*Simpson v. Shepard*) 230 U. S. 352; *Northern Securities Company v. U. S.*, 193 U. S. 197; *Houston E. & W. T. R. Co. v. U. S.*, 234 U. S. 342.

(j)

The tax levied by Title IX is in violation of Article I, Sec. 9, Cl. 4, and Art. I, Sec. 2, Cl. 3 of the Constitution because the tax is a direct tax levied without apportionment upon the basic natural right of having persons in one's employ.

The right to do business in collective or corporate form is a legislative grant accompanied by responsibilities and privileges of the most artificial character, defined by the State. This highly modernized privilege is in no sense a natural or personal right, basic in character and inseparable from the opportunity of existence itself. To tax it out of existence is not tantamount to withdrawal from the citizen of any right to do business at all, although it would shock the sense of justice and propriety. Hence the excise tax on doing business in corporate form sustained in *Flint v. Stone Tracy Co.*, 220 U. S. 107, was not a direct or capitation tax requiring apportionment.

But to tax out of existence the right to labor for another or its necessary correlative, the right to emply others, is to reach so directly the basis of personal existence and survival as to reach the status of a direct or capitation tax which may be levied by the Federal Government only by apportionment under Art. I, Sec. 9, Cl. 4, and Art. I, Sec. 2, Cl. 3, of the Federal Constitution.

There is no distinction from this standpoint between a tax against "having individuals in his employ" and "being in the employ of another" so far as the nature of a tax against either is concerned.

The number of persons gainfully employed in the United States is estimated at 40% of the total population of the United States. Of those not disqualified by reason of age or physical condition or unable to procure it, or serving household functions of the employed or represented by the professions requiring technical equipment, the percentage of employed persons is estimated at more than 90% of the population of the United States.

To tax employment or being employed is, accordingly, to tax that which is as basic to human existence in a free society, as the right to live.

The direct tax on wages of employment levied by Title VIII of the Federal Act without apportionment is of course justified solely by the 16th Amendment, since in the second case of *Pollock v. Farmers L. & T. Co.*, 158 U. S. 601, the Court not only held directly that taxes on incomes from the rent of lands and personal property or upon property solely by reason of its ownership were direct, but asserted that taxes "on incomes from professions, business *or employments*, as well as from offices and places of profit" were among the "*systems of direct* taxation" of many of the states at the time the Constitution was framed.*

A tax on the gain from or expense for personal labor is manifestly as direct a tax upon the basic right to employ or be employed as a tax upon the income from property is direct upon the property. Life itself is labor.

This tax is not levied under Title VIII on the income of employes engaged in any particular or artificial form of labor subject to withholding by the State, but in respect to all forms of labor under all conditions including those clearly beyond

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*158 U. S. at p. 632.

the long reach of the police power; so, the tax on employers under Title IX is against all employers "with respect to having individuals in his employ" in every employment involving 8 or more for the stipulated time. These are, accordingly, taxes upon the most basic form of human employment and are necessarily direct taxes.

Pollock v. Farmers Loan & Trust Co., 157 U. S. 429, 158 U. S. 601; *Knowlton v. Moore*, 178 U. S. 41; Flint v. *Stone Tracy Co.*, 220 U. S. 107. Of course, the Pollock Case repudiated the basis upon which the Hylton and Springer Cases had been decided (3 Dall. 171, 1 L. ed., 556; 102 U. S. 586, 26, L. ed. 253).

Now, is a tax on gross wages received or paid a tax on the natural right to employ or be employed? It obviously is unless, as we have pointed out in Part I, the prevailing notion is to be that all private employment is a species of slavery constituting a joint wrong and should be held as a franchise from the state.

In the *Adair Case* (*supra*, 208 U. S., at p.. 172-3) the Court asserted it was Adair's right, *as part of his personal liberty* to serve his employer as best he could, so long as he did nothing injurious to the public interest; that it was the right of the employer to have business relations with anyone with whom he can make contracts; that the right to purchase or to sell labor is part of the liberty protected by the 14th Amendment, subject of course to the police power:

> "Of course the liberty of contract relating to labor includes both parties to it. The one has as much right to purchase as the other to sell labor"—at p. 174.

No tax, sought to be justified as an excise tax on the privilege of doing a particular business in a particular

way, is here involved. The condition to the tax is, merely, "having persons in ones employ," whether because of necessity or illness or other disability or for charity or other reason, provided only the employees be eight in number and employed twenty days in twenty weeks.

It was conceded in the argument for the Government in *Flint v. Stone Tracy Co., supra,* that a tax upon the right to buy and sell property *upon an exchange* is an excise tax upon a privilege distinct from the "general natural right to buy and sell property anywhere".

Before sustaining as an excise (indirect) tax the war tax levied upon sales of commodities upon exchanges, the Court was at pains to consider at great length the nature of trading upon an exchange, distinguishing it from ordinary sales of the commodity and holding that the tax was laid upon *the privileges offered at boards of trade* and not upon the business itself or the members of the exchange. *Nicol v. Ames,* 173 U. S. 509. And see p. 521, 522.

Here the tax is directly levied upon the most fundamental charactertistic of employment: "the having of persons is one's employ," regardless of the manner or method. The mere element of number or duration can not be used as a catalyzer to split the bare right of employment into taxable elements.

The tax here is levied at the foundation of the right, without which (having in one's employ) there can be no employment at all. *Bromley v. McCaughn,* 280 U. S. 124, at p. 138.

Stated differently, the right to buy or sell labor or property generally is a basic natural right. To tax the sale or purchase is to tax the right to make it at all. "A

tax on the sale of an article, imported only for sale, is a tax on the article itself." *Brown v. Maryland,* 12 Wheat 419 (444); *Cook v. Pennsylvania,* 97 U. S. 566.

(k)

By reason of the initial and additional credits provided by Sections 902, 909 and 910 the tax levied by Title IX, if regarded as an excise, is lacking in uniformity in violation of Art. 1, Sec. 8, Cl. 1 of the Constitution.

The Government is confronted with the alternative of insisting that compensation systems are made obligatory upon the States by Title IX, thus rendering it invalid, or else that the right to establish credits is delegated to the States, destroying uniformity.

The Estate Tax and Florida v. Mellon, 273 U. S. 12 constitute no answer. In that case there was a bona fide effort to avoid double taxation upon inheritances by credit of fixed percentages of amounts actually paid to the State.

In this case the credits are allowed (Sec. 909, 910) not in the amount of or based upon a percentage of the payments to the State but *in an amount greater than the amounts actually paid to the state* based upon two elements within the discretionary control of two agencies, the State administration which allows credits for good behavior in stabilizing employment under the State Act, and the approval by the ~~approved~~ Federal Social Security Board of the State Act and its administration of the credits for good behavior.

Employers in different states and under different Acts are permitted by the Act to obtain credit in excess of

the 90% of their actual payments to the State fund based upon merit rating established to the satisfaction and in accordance with the determination of state boards.

The origin and purpose of this provision (encouragement of the individual employer to stabilize employment) has been indicated in the quotations from the President's Committee on Economic Security, supra. The provisions plainly subordinate the amount of the credit (and therefore the amount of the tax) not to determinate or judicially ascertainable factors but to discretionary administration of the State Act. That situation does not establish geographical uniformity.

Knowlton v. Moore, 178 U. S. 41, 83 et seq.

The statute is, moreover, lacking in uniformity as a tax measure because the uniformity intended to be accomplished by Title IX is not uniformity of application throughout the United States but uniformity in manufacturing cost based upon *intentional disparity of the tax itself.*

For this reason there is an intrinsic lack of uniformity in purpose.

(1)

Florida v. Mellon, 273 U. S. 12, does not support the contention of the Government as to the tax-credit device.

The history of the estate tax credit leaves no rational doubt that the credit for estate taxes allowed by the Federal Act was predicated upon a willingness of the federal government to withdraw the impact of double taxation from in-

heritances where the States felt it necessary to levy a state tax upon inheritances. The Federal government had no possible objective to subserve in requiring the States to adopt inheritance taxes. The allowance of the credit arose out of the continuous importunity of the States for federal comity in the matter.

No such dominant purpose of federal control could rationally be derived from the history of the act or from its intrinsic terms, as is the case here.

The case of *Florida v. Mellon* was initiated by the State to enjoin collection of the federal inheritance tax imposed by the Revenue Act of 1926 because of the credit provisions. This Court held that the State had no justiciable cause of action. It was not urged that the credit had a coercive effect upon Florida or had been adopted by the Federal government for any such objective or was in fact proximately related to that end. The Court held that the probable withdrawal of citizens from Florida because of the credit was speculative and remote. Moreover, since the Federal inheritance tax was in fact a tax levied unmistakably for general treasury purposes, it is obvious that the right to levy such tax took precedence over any conflicting policy of the State, and the Court so held.

It may be difficult at times to determine whether a tax or a credit is levied to effect and with the direct and proximate result of effecting an unconstitutional purpose, as in the *Child Labor Tax Case*, or is levied apparently or at least ostensibly for revenue as in the *McCray* and *Doremus Cases*. The Court has divided in the past and will divide in the future as to this test.

It is sufficient here to assert that the inheritance tax has been employed traditionally as a source of revenue, produced

substantial revenue both for states and nation, and that the credit was in fact urged by the States in an increasing bona fide desire to avoid onerous duplicate taxation on the same items, transactions or property: a desire in which the Supreme Court has evidenced an aroused and constructive interest.*

The difference between that honest comity and the use of a tax upon pay rolls, accompanied by a credit, to force states to adopt a federal "certified" system of compensation, is obvious.

(m)

The appropriations made by Title III are directly related to non-Federal objectives and are violative of the Federal System.

We take it to be so clear that the appropriations made by Title III are so inseparably related to the provisions drawing control of state functions to the Federal Administration and are so inseparably related to the illegal tax-credit device as not to involve here the question whether the appropriation is *per se* violative of Federal function.

It is sufficient that the taxing power can not be employed to raise or to appropriate money lawfully raised to purchase or enforce the enactment and administration of a state police regulation. *U. S. v. Butler, supra.*

The concession by the Government below that a purpose of the Federal Act was actively to participate in the State function by drawing the state police fund to the Federal treasury should alone remove the appropriation

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*Farmers Loan & Tr. Co. v. Minnesota, 280 U. S. 204, overruling the constructive situs case of Blackstone v. Miller, 188 U. S. 189.

and the validity of Title III from the range of legitimate federal powers.

Title III, as well as Title IX, contains the conditions as to Federal use and control of State police funds; subservience by the States to continuing Federal conditions, subject, after the State has committed itself and its funds to federal custody, to enlargement at any time by Congress so as to "increase the requirements which State laws must fill" (Pres. Com. Report, Supra.)

For this reason there seems no necessity for analyzing the appropriation in the light of the sound decision in *U. S. v. Certain Lands,* 78 Fed. (2d) 684, from the review of which the Government retreated. We content ourselves with the familiar expressions from *Gibbons v. Ogden,* 22 U. S. (9 Wheat) 1 (1824) that *"Congress is not empowered to tax for those purposes which are within the exclusive province of the States,"* and from the *Passenger Cases,* 48 U. S. (7 How.) 283 (1849) at page 446, where Mr. Justice Catron said:

> "Nor has Congress power to lay taxes to pay the debts of a State, nor to provide by taxation for its general welfare. Congress may tax for the treasury of the Union, and here its power ends."

We respectfully refer to the Court's consideration the admirable statement by George Ticknor Curtis (Georgetown University, Feb. 16, 1885) set out in full in one of the other briefs'* which is to our mind unanswerable against the contention for the validity of this extraordinary type of appropriation.

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*For Appellee in No. 724.

The appropriation accomplished by Title III is not the simple appropriation of tax proceeds made under authority of the tax clause. The appropriations here involved are accompanied by continuing control of the functions of an agency of the State's police power.

Under no theory advanced in support of the spending power has it been seriously contended that the power to appropriate carried authority further than the safeguarding of the funds. The power, so far as the tax clause confers power, is functus officio when the appropriation is properly accounted for. If the Federal Government proposes to go further and control or exact obedience to federal command, the Government must justify under some express power clause.

That principle is conspicuously violated here.

An illustration of its application is the retreat from the rate control clauses appended to Public Works utility loans. Realizing that these assertions of dominion of local rates, in the guise of administering a federal appropriation, were untenable a notorious public effort was made to rewrite the record.*

Here the record can not be re-written. It is in the Statute. The appropriation is made part of a bargain for Federal supervision and control, backed up by the threat of disapproval. We have shown how the threat and the appropriation are considered by the States; how the administrative agency, beyond the reach of judicial or administrative remedy even by the State may issue or withdraw certificates of approval under Sec. 903 and certificates of grant under Sec. 302, 303; that it has threatened cancellation if the State withheld its police funds for the reasonable interval of a test of the validity of the system.

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*Duke Power Co. v. Greenwood County, 81 L. ed. (Adv.) 149.

The control represented by the tax-credit device and the appropriation, was accurately analyzed by the report accompanying and recommended by the President's Message which initiated the law:

> "Accordingly, the Congress can at any time increase the requirements which State laws must fulfill and may, if it sees fit, at some future time, substitute a federally administered system for the cooperative Federal-State system we recommend."
>
> Report, accompanying Message of January 17, 1935, at p. 13.

That ultimate result has already been accomplished. It is intrinsic in the Federal Act. It is accomplished by the combination of persuasion and violence of the tax and appropriation clauses and carries, as admitted by the Government below, a designed and direct participation in the administration of the system.

For these reasons, the tax-spending provisions of Art, I. Sec. 8, Cl. 1, does not warrant an appropriation carrying continuing aid and control of a police regulation of the State. Title III is void and the Alabama Act is for that reason inoperative.

(n)

The type of appropriation here involved can have no other result than disintegration of the Federal System.

The type of appropriation here involved, is so inextricably wound up with the surrender by the State of its functions as to be violative of the principle of Federal equilibrium. The repeated quotation from the Report of the Committee on Economic Security as approved and transmitted to Congress is of the gravest significance and illustrates our contention. Acquiescence purchased by

an appropriation is illegal per se and invalidates the appropriation itself but here the Federal participation and control purchased by Title III represents merely the first stage in a reserved opportunity to expand the conditions.

On broader grounds, we assert that the unconditional theory as to appropriations pressed by the Government both as valid and as immune from justiciable attack is necessarily subversive of the Federal balance.

The dual theory is based upon the splitting and decentralization of problems, conceiving that size alone carries them beyond the scope of human capacity.

From the standpoint not of economic or political expediency, but of the Constitution, we assert

1) The contention that it is a function of the general government to assume responsibility for internal economic policies, for local social welfare policies (including the revolutionary plan to throw the burden of unemployment relief upon selected employers) is, in and of itself, destructive of the Federal balance and unwarranted.

2) The assumption by Congress that States may not adopt police regulations of employment and unemployment without Federal intervention is false in fact and constitutionally untenable. The interstate competition between industries removed thousands of miles from each other is not so sensitive as those bent on Federal aggrandizement argue. The opposition of industry to such measures because of fancied competition and effect is mere opposition to the scheme at all.

In any event, the inexorable grasp and assumption by Congress that it must intrude into these domains is

subversive of our system and will concentrate in Washington a magnitude of responsibility with which elected officials and Congress can not mentally or morally cope.

The theory underlying this appropriation is palpably violative of the Federal balance and on that ground alone is untenable.

(o)

Title IX regarded solely as a tax would be invalid under the Fifth Amendment

All that has been said about the exaction levied by the State Act, as effected by the Fourteenth Amendment, clearly would be applicable here, should reality be ignored and Title IX be regarded as a pure tax.

Heiner v. Donnan, supra;

Coolidge v. Long, 282 U. S. 582, 596.

A tax for revenue levied upon employers of eight or more is as arbitrary as one exacted of all red-headed persons. We do not elaborate the argument because it is inconceivable that this Court will hold that Title IX is a real tax, or view it apart from its universally known background of purpose, objective, and effect.

CONCLUSION

Titles III and IX and their determination by this Court constitute a final crisis in the history of the Constitution.

It would be useless to pretend that the unemployment compensation provisions of the Federal Act do not present a final crisis in the political form of Government and in the economic life of America. This is no fortuitous statute, unrelated to a basic purpose. It represents a determined effort to destroy the equilibrium between the State and Federal Governments.

To ignore the certainties of disaster involved in Titles III and IX would not befit a member of this Bar in a case of this gravity. The purpose of this law is to strike at the heart of the police power of the States by the penalty provision in Title IX masquerading as a revenue tax and through the appropriation-control device of Title III, masquerading as a grant in aid.

All persons concerned in the preparation, report, transmission to Congress, testimony before Committees, report by Congressional Committees, enactment and approval of the Act appear upon the record to recognize that the provisions of Titles III and IX constitute the foundation for the establishment, and the control in material particulars by the Government of the form and administration, of State systems of unemployment compensation. This Court alone of all officers of Government is asked to ignore that certainty.

We have quoted the President. None of the President's Committee, nor the 127 members of the Advisory Committees, nor any of the 184 witnesses who testified before the Committees of Congress on the bill, appear to have been in doubt as to the purpose of the tax-credit device or the appropriation-control device to induce the adoption of State systems and to equalize the cost of employment in those states which did not conform. That the 10% not credited was to be retained to cover expenses of this particular integral scheme was asserted by the President in his Message (supra) and by Secretary Perkins (Senate Comm., p. 112).

The Secretary of Labor was Chairman of the President's Committee, she testified at length before the Committees. In explaining the tax provision of Title IX she stated its purpose to be that for which it had been recommended by the President's Committee, viz.:

> "to equalize the cost of doing business in every state, so far as it can be equalized, with regard to taking care of unemployed persons." Senate Comm., p. 126.
>
> "a very real equalization of competitive costs between employers in various states, so that there will be no special advantage to any employer to continue on his business in a state which does not have an unemployment insurance law." House Comm., p. 183.

The members of the President's Committee on Economic Security who transmitted the Report accompanying the Message of January 17, 1935 (H. D. No. 81, 74th Cong., 1st Sess.) were Frances E. Perkins, Secretary of Labor, Chairman; H. Morgenthau, Jr., Secretary of the Treasury; Homer Cummings, Attorney General; H. A. Wallace, Secretary of Agriculture; Harry Hopkins, Federal Emergency Relief Administrator.

She frankly told the House Committee that the Committee on Economic Security believed that "the device of utilizing the taxing power of the Federal Government" was the best method which the Committee could recommend at the time. (p. 183).

Dr. E. E. Witte, Executive Director of the President's Committee, testified at great length. In the connection above mentioned he said:

> "The system operates so that employers in a State that does not enact an unemployment compensation act will have the same cost as employers in States that do not. * * The disadvantage that a State puts itself under by enacting such an act is removed by this bill." House Comm., p. 34.

When the Committees of Congress made their reports they were in accordance with these expressions.

The Attorney General of the United States gave advice or opinion to the effect that if Congress would separate the tax from the appropriation no one could raise the question, followed by the Pickwickian conclusion that it would be reasonably safe to assume that the bill, if enacted into law, will probably be upheld as Constitutional. Cong. Rec., Vol. 79, Part 5, Col. 2, line 27. p. 5782

Confessedly if a tax for general revenue and a separate appropriation statute are historically unrelated and have no legislative nexus, they must in general stand separately before the Courts as they do among the laws; in such cases purposes or effects local in character that are in fact concomitant and are not palpably dominant escape the bar of the Constitution. So as to the specification of legislative details for safeguarding the expendi-

ture of appropriations made for a generic purpose within the tax-spending power, where the details only incidentally influence local conduct.

Those circumstances and their capacity for abusive extension call for a high sense of legislative and Constitutional morals when statutes, in fact directly related, are enacted separately or when the border line of doubt is plainly reached.

If, however, the split titles or separate statutes have been enacted without the benefit of such a sense, the case for the Constitution is not closed:

> "If it be true that by varying the form the substance may be changed, it is not easy to see that anything would remain of the limitations of the Constitution, or of the rule of taxation and representation, so carefully recognized and guarded in favor of the citizens of each State. But constitutional provisions cannot be thus evaded. It is the substance and not the form which controls, as has indeed been established by repeated decisions of this Court."
>
> *Pollock v. Farmers L. & T. Co.,* per Fuller, C. J., 157 U. S. 429, at p. 581.

> "Passing the novel suggestion that two statutes enacted as parts of a single scheme should be tested as if they were distinct and unrelated, we think the legislation now before us is not susceptible of such separation and treatment."
>
> *United States v. Butler,* 297 U. S. 1, 58.

A glaring instance of contempt for constitutional sub-

stance is illustrated by the action of Congress following *Railroad Retirement Board v. Alton R. R., supra.**

THE END SOUGHT

The intent is, plainly, to force this court to accept the totalitarian conception of Federal power; here, immediately, to accept without scrutiny all concomitant attributes as to all taxes, however trivially intended or effective as revenue measures, and to approve the "continuing control" theory as to all appropriations, however they may purchase local action.

The immediate question before this Court is whether a federal tax intended to fail as a revenue measure (here to the extent of 90%) and to operate *upon the police power of the State itself* (not, as in the Child Labor Tax Case, merely upon individual manufacturers), has for its dominant purpose taxation; and if so, whether it can be sustained under the doctrine of the Federal balance where it concomitantly affects, not merely private individuals, as in *Magnano v. Hamilton, supra,* but the sovereignty of the State itself.

Also whether the provisions of Title III, effecting continuing control of discretionary aspects of a sovereign state function, (not merely the qualification of individuals to receive Federal bounty), also violates the express terms of the Tenth Amendment as well as the equally powerful implied negation of the Federal equilibrium.

But beyond those immediate questions, which, we submit, must be resolved against the Government, this Court is faced

*The District of Columbia Supreme Court held that the two acts adopted following that decision "show an attempt by Congress to accomplish under certain of its powers an end which has been held to be unconstitutional." 16 F. Supp. 955, 957.

with the question whether the Constitution is to be surrendered to a practice, advanced to the status of a habit in recent years, to use the "concomitant purpose' theory of federal taxation and the "control" theory of Federal appropriation to destroy the Constitution.

In short, surrender the Constitution to deception (Title IX) and bribery (Title III).

If that combination of devices is to be tolerated as the measure of Federal power, then in the not distant future we may anticipate the end of our Federal system and the accession of the totalitarian state, not by amendment, not by civil war or revolution, but by the moral degeneracy of the Constitutional concept.

That result can not be accomplished with the approval of this Court.

Respectfully submitted,

Jos. F. Johnston

Forney Johnston

Counsel for Appellee.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1936.

No. 797.

ALBERT A. CARMICHAEL, as Attorney General of the State of Alabama, *et al.*, *Appellants*,

v.

GULF STATES PAPER CORPORATION.

ADDENDUM TO BRIEF FOR APPELLEE.

JOS. F. JOHNSTON,
FORNEY JOHNSTON,
Counsel for Appellee.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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ADDENDUM TO BRIEF FOR APPELLEE.

PART I.

(Continued from p. 60)

THE ALABAMA LAW VIOLATES THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE 14TH AMENDMENT.

(q)

The decision in Dayton-Goose Creek Railway Company v. United States, 263 U. S. 456, does not sustain appellants' contention as to due process.

The decision as to the validity of the excess-earnings recapture clause (Sec. 15a) of the Transportation Act of

1920 (41 Stat. 456, 489-91), relied on by the State below, does not sustain Appellants' contention.

Sec. 15(a) of that Act was expressly based on the fact which had confronted the Commission in all of the general rate cases for years, that a general level of competitive rates which would enable the carriers as a whole to survive, would produce excessive revenue for particular carriers in all of the competitive groups. Conversely, if competitive rates were established sufficient to produce only a reasonable return upon the property devoted to the public service by the low cost carrier or the carrier with heavy volume, the other carriers in the competitive group, but no less essential to the area served by them, could not survive.

This had been termed by Senator Cummings the insoluble problem. It was met in principle by Sec. 15(a), which directed the Commission so to adjust the rates in competitive groups as to produce a fair return upon the fair value of the transportation machine in the aggregate. This was accompanied, in effect, by the declaration that, to the extent that such rates in their aggregate effect produce more than a reasonable return for individual carriers, the rates should be regarded as received in trust, recoverable by the Commission for use in furtherance of railway transportation in the interest of the public which (through the Act) had intentionally produced the excess.

Obviously the carriers could not complain of rate regulation which stamped the proceeds of rates, in advance, with a trust subject to the test of aggregate return and in the end left them with no more than a fair and reasonable return, in the aggregate.

The Act *did not* provide that the excess so recovered should be given to the weak carriers, in whose welfare the public (and not, in a constitutional sense, their strong competitors) were interested.

The principle purpose of the Act was the elevation of rates by mandate of Congress to enable the transportation machine, as a whole, to survive the disasters which had

threatened it, not to extract vested earnings from one carrier for payment to another.

Something had to be done with the recaptured fund. It was not practicable to return the fund to the shippers who had produced it. Such return would have been a rebate, an incentive to ship via the line which did not need the traffic, thus further intensifying the problem. Such return to shippers of millions of fractional amounts was from an accounting standpoint obviously impracticable.

Hence Congress covered the excess earnings fund into a transportation fund to be employed for the public benefit in research, experiment, in supplying equipment for lease in case of car shortages, and in loans to carriers, upon adequate security—not gifts at all.

The plan was proposed by the insurance companies, savings banks and fiduciary investing institutions which held vast amounts of railway securities threatened with disaster. They were looking for stabilization of a fair return, not the chance of excessive return to some carriers and starvation for the remainder. To bring about stabilization called for horizontal rate increases in competitive areas. This Congress would not mandate unless accompanied by the recapture clause, because without that mechanism it had always proven that increases merely increased returns that were deemed excessive for particular carriers.

The railway executives with a few exceptions opposed the plan and in inviting the opinion of counsel as to its constitutionality, *before the Act had taken final and proper form*, they stated the case as if the statute were to be a mere transfer of earnings which had unconditionally reached the treasury of the prosperous carriers, and had become their vested property, to other less prosperous carriers.

Based upon that hypothesis distinguished counsel rendered an opinion that the proposal would violate the Fifth

Amendment.* Based on that hypothesis the opinion was undoubtedly sound; but the hypothesis omitted the essential consideration that the excess inherent in the rates was when received expressly impressed with a trust, subject to the test of final results, and never vested in the carrier; nor was the property of one carrier "taken" for another. The provision was merely regulation of rates by an appropriate method.

The hypothesis assumed and therefore the conclusion stated in the opinion mentioned is directly applicable here:

(1) Here there is no regulation of any employment;

(2) Here the funds exacted by the State are the vested property of the employers and are to be paid over to individuals either for their private advantage or, if public, in discharge of an obligation or purpose of the State and not of the employer taxed. In that responsibility the employers subjected to the exaction have no more interest than any member of the public, and can not be singled out to stand the burden alone.**

(3) Neither appellee nor any other employer collects any money, impressed with a public trust, which it pays into the common fund.

---

*Hearings—Return of Railroads to Private Ownership, House of Rep., Vol. 3, p. 2981; Library of Cong. No. HE2705, 1919, .A174. Opinion by Hon. Chas. E. Hughes, while at Bar.

**The opinion also (p. 2982) stated that "There is no benefit conferred upon the carriers under the bill which can be regarded as justifying an exaction which otherwise could not be enforced."

c.f. also the distinction, in the opinion, of *Noble State Bank* v. *Haskell* and *Mountain Timber Co.* v. *Washington*.

PART III.

(p)

The decisions of the Supreme Court of Canada and the Privy Council in the matter of the Canadian Unemployment and Social Insurance Law of 1935 and related questions referred under the Supreme Court Act are impressive precedents under the British-North America Act of 1867, establishing a Federal system in Canada, as to the lack of national competence to deal with unemployment insurance, either through a compulsory tax device or under the guise of appropriating national funds.

Pertinent provisions of the British-North America Act of 1867, An Act for the Union of Canada, Nova Scotia and New Brunswick, and the Government thereof; and for purposes connected therewith," March 29, 1867, 30 Vict. Cap. 3, are set out in the margin.*

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*VI—DISTRIBUTION OF LEGISLATIVE POWERS.

Powers of Parliament.

91. It shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all matters coming within the Classes of Subjects next hereinafter enumerated; that is to say:

1. The Public Debt and Property.
2. The Regulation of Trade and Commerce.
3. The raising of Money by any Mode or System of Taxation.
4. The borrowing of Money on the Public Credit."

[There follow twenty-five other classifications, including navigation, currency and coinage, banking, interest, legal tender, bankruptcy, patents, copyrights, Indians, naturalization, marriage and divorce, concluding as follows:]

"29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces, and any other matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the Class of Matters of a local or private nature comprised in the Enumeration of Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces."

Canadian Employment and Social Insurance Act, 1935.

The Canadian national Government in 1935 adopted the Employment and Social Insurance Act of 1935 (Can.) c. 38.

The question whether this Act was ultra vires of the Dominion Parliament was referred to the Supreme Court of Canada and by a vote of four to two held to be beyond Dominion competence (1936) 3 D. L. R. 644. On appeal to the Privy Council by judgment delivered January 28, 1937, the judgment of the Supreme Court of Canada was unanimously affirmed* on these grounds:

(1) The substance of Part III of the Act establishes a system of unemployment insurance to be supported in part by Parliament, in part by compulsory contributions from employers and in part by contributions from employes. Provisions of this nature fall within the class of property and civil rights of the Provinces, within the exclusive competence of the Provincial Legislatures.

(2) The legislation can not be sustained under the provisions of the British North America Act (Section 91(a) and (3)), relating to the public debt and property of the Dominion and the power of taxation, the argument for the Act being that the money raised becomes public property and that the

> "Dominion has the complete legislative authority to direct that the money so raised, together with assistance from money raised by general taxation, shall be

---

Exclusive Powers of Provincial Legislatures.

92. In each Province the Legislature may exclusively make Laws in relation matters coming within the Classes of Subjects next hereinafter enumerated; that is to say:

* * * * *

2. Direct taxation within the Province in order to the raising of a Revenue for Provincial Purposes. * * *

13. Property and civil rights in the Province. * * *

16. Generally all matters of a merely local or private nature in the Province."

—The Law Reports—Statutes, Vol. 2, 1867, 30 & 31 Vict., London 1867. U. S. Sup. Ct. Library.

---

*Sub nom. *Attorney General of Canada* v. *Atty. Gen. of Ontario* [1937], 1 D. L. R. [P. C.] 684.

applied in forming an insurance fund and generally in accordance with the provisions of the Act." (p. 687.)

In rejecting the contention based upon the power of the Dominion to dispose of its property and to appropriate, the Privy Council tersely disposed of two questions relied upon by Appellant in the case at bar both as to the State and Federal Act:

(a) Doubt was expressed whether compulsion applied to an employed person to make a contribution to an insurance fund is in fact taxation, where the benefit is for a period proportionate to the number of contributions.

> "It might seem difficult to discern how it differs from a form of compulsory insurance, or what the difference is between a statutory obligation to pay insurance premiums to the State or to an insurance company." (p. 687.)

(b) Assuming that the Dominion has collected a fund by means of a tax, the Privy Council asserted:

> It may still be legislation affecting the classes of subjects enumerated in section 92, and, if so, would be ultra vires. In other words, Dominion legislation, even though it deals with Dominion Property, may yet be so framed as to invade civil rights within the Province: or encroach upon the classes of subjects which are reserved to provincial competence. It is not necessary that it should be a colourable device, or a pretense. If on the true view of the legislation it is found that in reality, in pith and substance, the legislation invades civil rights within the Province or in respect of other classes of subjects otherwise encroaches upon the provincial field, the legislation will be invalid. To hold otherwise would afford the Dominion an easy passage into the provincial domain. In the present case their Lordships agree with the majority of the Supreme Court in holding that in pith and substance this Act is an insurance Act affecting the civil rights of employers and employed in each Province, and as such is invalid. The other parts of the Act are so inextricably mixed

up with the insurance provisions of Part III that it is impossible to sever them. It seems obvious also that in its truncated form, apart from Part III, the Act would never have come into existence. It follows that the whole Act must be pronounced ultra vires, and in accordance with the view of the majority of the Supreme Court their Lordships will humbly advise His Majesty that this appeal be dismissed" ((1937) 1 D. L. R. at 687.)

The obvious identity between the questions involved rests upon the similarity in essence between the Canadian Constitution established by the Act of 1867 and our own, from which its basic principle of a Federal State was adopted.

This opinion of the Privy Council followed an elaborate opinion expressing their unanimous conclusion [(1937) 1 D. L. R. 673] that the "Weekly Rest in Industrial Undertakings Act," "Minimum Wages Act," and "Limitation of Hours of Work Act," upon which the Canadian Supreme Court had divided equally [(1936) 3 D. L. R. 673], were *ultra vires* of the Dominion Parliament.

This decision also followed a unanimous opinion of the Canadian Supreme Court [(1936) 3 D. L. R. 622] approved on appeal by the Privy Council [(1937) 1 D. L. R. 691] holding *ultra vires* the "Natural Products Marketing Act, 1934 (Can.) c. 57, as amended 1935 (Can.) c. 64," as beyond Dominion competence under the commerce and general welfare clause of the Canadian constitution.

In the latter case the Supreme Court of Canada gave elaborate reconsideration to the cases and announced its conclusion June 17, 1936, (1936) S. C. R. p. 398.

So the entire subject has received the most careful consideration by the Canadian and British courts of last resort.

The majority of the Canadian Court in the case involving the Employment and Social Insurance Act held, *inter alia,* that:

(1) The legislation could not be supported either under the general (residuary) power to make laws for the peace,

order and good government of Canada, or as an exercise of the power to regulate trade and commerce [(1936) 3 D. L. R. at 664];

(2) Nor can it be supported under the "power to raise money by any mode or system of taxation," or "the power to appropriate public money for any public purpose" (p. 665); nor under the public debt or property clause:

> "The provisions for levying contributions for the creation of the Unemployment Insurance Fund are nothing more than provisions to enable the carrying out of the true and only purpose of the legislation. • • • The contributions (or taxes, if they are to be so called) are mere incidents of the regulation" (p. 666).

(3) "It being well understood, and in fact conceded, that there are subject matters falling within the legislative authority of the Provinces, the Dominion Parliament may not, under pretext of the power to deal with its property or to raise money by taxation, indirectly accomplish the ends sought for in this legislation. If it were otherwise, the Dominion Parliament, under color of the taxing power, would be permitted to invade almost any of the fields exclusively reserved by the Constitution to the Legislatures in each Province" (p. 666-7).

(4) The effect of the Act is "to attach statutory terms to the contracts of employment" (Lord Haldane in Workmen's Compensation Board v. Canadian Pac. Ry., 48 D. L. R. 18); and its immediate result is to create civil rights as between employers and employes (p. 667).

(5) The Dominion Parliament can not use its power of taxation to compel the insertion of conditions of that character in ordinary employment contracts (p. 667).

The opinion of the majority restates the necessity under the great decisions interpreting the Canadian constitutional system of getting at the "true nature and character of stat-

utes" at their "pith and substances," that they be scrutinized in their entirety for the purpose of determining whether the results intended lie with the Central Government or the provinces [1936] D.L.R. at p. 666.

The prevailing opinion of Rinfret, J., asserted:

> "I deprecate the idea that the Dominion Parliament may use its power of taxation to compel the insertion of conditions of that character in ordinary contracts between employers and employees" (p. 667).

The conclusion in that case is no less applicable here:

> "• • • the Act submitted to the Court is not a mere encroachment on the provincial fields through the exercise of powers allegedly ancillary or incidental to one of the enumerated powers of section 91; in its pith and substance, it is a direct and unwarranted appropriation of the powers attributed to the legislatures [of the Provinces] by force of Section 92 of the Constitution." (ib., at p. 667.)

The most careful consideration was given by the Canadian Court (1936) 3 D.L.R., beginning at p. 635, and sustained by the Privy Council as the *locus classicus* on the subject, to the question whether, and if so, when, the circumstances of national peril may attain such dimensions as to suspend the normal distinction of powers in SS. 91 and 92 of the Constitution [Privy Council (1937) 1 D.L.R., at p. 683]. Said the latter court, per Lord Atkin:

> "While the ship of state now sails on larger ventures and into foreign waters she still retains the watertight compartments which are an essential part of her original structure." (ib. at 684.)

Respectfully submitted,

Jos. F. Johnston,
Forney Johnston,
Counsel for Appellee.

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IN THE

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OCTOBER TERM, 1936.

No. 797.

ALBERT A. CARMICHAEL et al.,
Appellants,

v.

GULF STATES PAPER COMPANY,
Appellee.

BRIEF OF AMICI CURIAE.

JOHN S. COLEMAN,
WILLIAM B. WHITE,
Attorneys for Amici Curiae.

St. Louis Law Printing Co., 415 North Eighth Street. CEntral 4477.

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61 Corpus Juris 159..... 6

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1936.

No. 797.

ALBERT A. CARMICHAEL et al.,
Appellants,

v.

GULF STATES PAPER COMPANY,
Appellee.

BRIEF OF AMICI CURIAE.

STATEMENT.

This brief *amici curiae* is filed on behalf of certain parties which employ eight or more persons in the State of Alabama and are subject to the Unemployment Compensation Act of Alabama. They contend that the State Act and Titles III and IX of the Federal Social Security Act are unconstitutional.

Five of the parties, Stockham Pipe Fittings Company, Woodward Iron Company, Continental Gin Company, Standard Oil Company, and James B. Clow & Sons, are plaintiffs in one suit and Sloss-Sheffield Steel & Iron Company is plaintiff in another suit instituted and now pending in the United States District Court for the Middle District of Alabama, against the Attorney General of Alabama and the three members of the State Unemployment Compensation Commission, to restrain the enforcement of the State Act. The bills were not such as required the convening of a three-judge court, and the District Court granted injunctions, now in effect, enjoining the enforcement of the Act.

Eighty-two of the other parties on whose behalf this brief is filed, instituted suit against the Attorney General of Alabama and the members composing the State Unemployment Compensation Commission, in the Circuit Court of Montgomery County, Alabama, praying that the defendants be restrained from enforcing the Alabama Act on the grounds that it violated both the State and Federal Constitutions. On final hearing the Circuit Court sustained a demurrer to the bill, which judgment was affirmed by the Supreme Court of Alabama. *Talladega Ice and Storage Company, et al., v. Carmichael, et al.*, (Manuscript). This case is now pending on application for rehearing.

All of the above mentioned parties, therefore, have a vital interest in the determination by this Court of the issues involved in the present cause.

LIMITED SCOPE OF THIS BRIEF.

It is not the purpose of this brief to deal with all of the questions arising under these issues, but rather, supplemental to the brief filed on behalf of Appellee, to discuss mainly the invalidity of the State Act under the due process clause of the Fourteenth Amendment, and as it is considered that the State Act is inextricably interlocked with and dependent upon Titles III and IX of the Federal Act, to also discuss the validity of these titles under the Tenth Amendment.

It is not necessary to review the provisions of the State or Federal Acts as the brief of Appellee contains a detailed analysis thereof. The provisions of the Acts which are pertinent to the points discussed herein will be considered as they arise.

POINT I.

The Exactions Imposed by the Alabama Act Constitute a Taking of Property Without Due Process of Law.

The validity of exactions of the character imposed on employers and employees by the Alabama Act has not been passed on by this Court. The Supreme Court of Alabama in *Beeland Wholesale Company v. Kaufman et al.* (Manuscript), in speaking of the validity of the State Act under the Fourteenth Amendment said: "But no decision of the United States Supreme Court is directly in point on it * * *." No decision of this Court, as we view its holdings, has held that money, whether under the guise of a tax or of police power exactions, can be taken from one class or group of citizens and distributed to another in the manner required by the present Act.

The Alabama Supreme Court upheld the provisions imposing exactions on employers and employees as a valid exercise of the State's taxing powers. In the *Beeland* opinion it was said: "They are taxes and can be justified only as such."

The situation does not here obtain of a separation of a tax levy from the appropriation provisions so as to require a separate treatment of the exercise of the taxing power and of the power to appropriate. We quote further from the *Beeland* opinion:

> "The tax we are dealing with now, the State tax, is laid for a definite purpose and the amount collected is to be put in trust to be used for no other purpose. The tax levied cannot be separated from the purpose to be accomplished, and the resulting benefits to the employer class generally."

Cf. *Turnipseed et al. v. Blan*, 226 Ala. 549, 148 So. 116, which holds that a taxpayer may enjoin a state officer from unlawfully disbursing state funds.

It therefore follows that if the State of Alabama is levying a tax, the proceeds of which are to be unlawfully expended, a taxpayer may successfully resist the imposition even though the levy purports to be made under the general power to tax.

Section 93 of the Alabama Constitution provides that the State shall not lend its money or credit to any individual, association or corporation. This provision has been construed as preventing payments or bounties to individuals or classes of individuals who have no particular claim against the State. The following cases construe Section 94 of the State Constitution, which is similar to

Section 92, except that Section 94 applies to counties and cities:

Board of Revenue of Mobile County v. Puckett, 227 Ala. 374, 149 So. 850;
Garland v. Board of Revenue of Montgomery County, 87 Ala. 227, 6 So. 403;
Southern Railway v. Hartshorne, 162 Ala. 491, 50 So. 139;
Griffin v. Jeffers, 221 Ala. 649, 130 So. 190;
Stone v. State, 223 Ala. 426, 136 So. 727.

It is of course clear that monies raised by the State under its taxing powers are public revenues and can only be used for public purposes. It matters not that the proceeds of the levy are specifically appropriated. Such levy must be for a public use as contradistinguished from a private use or purpose. As we interpret the opinion in the *Beeland* case, the tax is sustained because the amounts collected are devoted to a public purpose, and not because the parties taxed receive equivalent reciprocal benefits.

Whether a tax is levied for a public purpose is a judicial question. We quote from Cooley on Taxation, Volume 1, Fourth Edition, at page 212, as follows:

> "It is the first requisite of lawful taxation, that the purpose for which it is laid shall be a public purpose. The decision to lay a tax for a given purpose involves a legislative conclusion that the purpose is one for which a tax may be laid; in other words, is a public purpose. But the determination of the legislature on this question is not, like its decision on ordinary questions of public policy, conclusive either on the other departments of the government, or on the people. The question, what is and what is not a public purpose, is one of law; and though unquestionably the legislature has large discretion in selecting

the object for which taxes shall be laid, its decision is not final."

The attempted enforcement of a tax imposed under an invalid law violates the due process clause. We quote from Cooley on Taxation, Volume 1, Fourth Edition, at page 305, as follows:

> "First, it would seem that a tax for a private as distinguished from a public purpose violates the due process clause."

We also quote from 61 Corpus Juris, 159:

> "Since the taxing power must be exercised for a public purpose, failure to comply with this requisite has been held a violation of the guaranty of due process of law."

The payment of benefits under the Alabama Act to the unemployed is not sustained under the principle of poor relief. We quote from the opinion in the *Beeland* case:

> "Under such circumstances, the State is not dependent upon section 88, Constitution, to help the poor."

It is clearly evident that the appropriation for the payment of benefits to idle employees in certain industrial or business occupations regardless of the condition or need of such employees could not have been justified as a valid exercise of the power to provide relief for the indigent. The State Act makes no distinction between the right of the affluent unemployed and the right of the destitute unemployed to receive benefits from the unemployment fund created by the levy held to be under the general taxing powers.

Certainly, unemployed persons who formerly worked for

salaries or wages have no more claim to special consideration in the way of public bounties than unemployed doctors, preachers, lawyers, blacksmiths or draymen who have not been deriving their sources of income from a master and servant relationship, or those who, by reason of physical disabilities or other causes, never held jobs.

Is there any more duty or obligation on the part of the State to pay the unemployed who have been engaged in industrial or business occupations, than the unemployed who have worked for farmers and who are excluded under the Act as recipients of benefits? It is true that neither farmers nor their employees are subject to the tax, but it has never been considered that a taxpayer who pays taxes levied under general revenue powers is by virtue of this fact entitled to preferential treatment in the disbursement of the tax proceeds.

It may be contended that because the State provides benefits for only a portion of the unemployed, that the Act is not rendered void because of the fact that it fails to provide for all of the unemployed. But can the State, consistent with due process, levy a tax and single out a selected class for bounties payable from the tax proceeds, to whom it owes no legal or moral obligation, and exclude others equally as deserving?

The citizens support the State and not the State the citizens. There is no duty on the part of the State to provide employment and it cannot assume the responsibilities of reimbursing the unemployed because of their lack of employment.

Whether levies of the character exacted by the State Act are sought to be justified under the general powers of taxation or under its police powers as imposing exactions only on those who receive equivalent benefits, this

Court has never held that a scheme such as the present one is valid. The cases which appear to be most cited by those who would sustain the legality of this type of legislation are:

Mountain Timber Company v. State of Washington, 243 U. S. 219, 61 L. Ed. 685;
Noble State Bank v. Haskell, 219 U. S. 104, 55 L. Ed. 112,

and the *Head Money Cases—Edye v. Robertson*, 112 U. S. 580, 28 L. Ed. 798. It is respectfully submitted that when these cases are analyzed, they by implication, at least, condemn rather than sanction levies like the present State Act.

It appears from the *Mountain Timber Case*, that the State of Washington had adopted a compulsory Workmen's Compensation Act, which provided for a fund for compensation of workmen injured in hazardous employment. The hazardous industries were classified so that the employees subject to the Act were required to contribute according to the hazard involved in their particular industry. One class of employers did not have to contribute to the fund created for employees injured while working in a separate kind of work. The Act established forty-seven different classes of employment and the rates of contribution varied from 1½% for some classes to 10% for the most hazardous classes. The Supreme Court quoted in italics in its opinion the following provisions of the Act:

> "In that the intent is that the fund created under this section shall ultimately become neither more nor less than self-supporting, exclusive of the expense of administration, the rates in this section named are

subject to future adjustment by the legislature, and the classifications to rearrangement following any relative increase or decrease of hazard shown by experience."

We quote further from the opinion, as follows:

"The percentages seem to be high; but when these are taken in connection with the provisions requiring accounts to be kept with each industry in accordance with the classification, and declaring that no class shall be liable for the depletion of the accident fund from accidents happening in any other class, and that any class having sufficient funds to its credit at the end of the first three months or any month thereafter is not to be called upon, it is plain that, after the initial payment, which may be regarded as a temporary reserve, the assessments will be limited to the amounts necessary to meet actual losses."

Further on, the opinion says:

"We are unable to discern any ground in natural justice or fundamental right that prevents the state from imposing the entire burden upon the industries that occasion the losses."

The vital differences between the Washington Act considered in the above case and the Alabama Unemployment Compensation Act are plainly apparent. The Washington Act, instead of making virtually all employers and employees subject to the Act, selected those which were considered to be engaged in hazardous industries, but stronger still, the employers in one class of hazardous industry did not have to contribute to the employees of another class. Under the Alabama Act, all employers and employees, except the comparatively few exempted by the Act, are grouped together and required to contribute at the same

rate to a common pooled fund. Hazardous and non-hazardous enterprises and occupations having much unemployment and occupations having no unemployment bear the same rate of tax, and the less unemployment an industry has, the greater is its tax burden. This is just the opposite of the Washington Act which required the class of industry having the greatest accident toll to make the largest contribution. As clearly pointed out in the opinion in the *Mountain Timber* case, the industries that occasioned the losses bore the brunt of the burden. Employers who keep their employees at work are certainly not the ones who are contributing to unemployment, but, under the Alabama Act, only the industries who have employment contribute to the unemployed. The features of the Washington Act pointed out in the opinion in the *Mountain Timber* case seem to us to clearly indicate why the Alabama Act is invalid. Even with the distinguishing features carefully pointed out by the majority of the Court in this case, Mr. Chief Justice White, Mr. Justice McKenna, Mr. Justice Van Devanter and Mr. Justice McReynolds dissented.

Mr. Justice Roberts in the opinion in *Railroad Board v. Alton R. Company*, 295 U. S. 330, 79 L. Ed. 1468, clearly analyzes the holding in the *Mountain Timber* case. We quote excerpts from the opinion as follows:

> "It is claimed that several other decisions confirm the legality of the pooling principle, when reasonably applied. For this position petitioners cite Mountain Timber Co. v. Washington, 243 U. S. 219, 61 L. ed. 685, 37 S. Ct. 260, Ann. Cas. 1917 D, 642, 13 N. C. C. A. 927; Noble State Bank v. Haskell, 219 U. S. 104, 55 L. ed. 112, 31 S. Ct. 486, 32 L. R. A. (N. S.) 1062, Ann. Cas. 1912 A, 487, and Thornton v. Duffy, 254 U. S. 361, 65 L. ed. 304, 41 S. Ct. 137. In the first of these

the Washington workmen's compensation act, which required employers in extra-hazardous employment, to pay into a state fund certain premiums based upon the percentage of estimated pay roll of the workmen employed, was under attack. For the purpose of payments into the fund accounts were to be kept with each industry in accordance with a statutory classification, and it was definitely provided that no class should be liable for the depletion of the accident fund by reason of accidents happening in any other class. The act therefore clearly recognized the difference in drain or burden on the fund arising from different industries and sought to equate the burden in accordance with the risk. The challenge of the employers was that the statute failed of equitable apportionment as between the constituted classes. But no proof was furnished to that effect, and this court assumed that the classification was made in an effort at fairness and equity as between classes. The Railroad Retirement Act, on the contrary, makes no classification, but, as above said, *treats all the carriers as a single employer, irrespective of their several conditions.*

• • • • • • •

"We conclude that the provisions of the Act which disregard the private and separate ownership of the several respondents, treat them all as a single employer, and pool all their assets regardless of their individual obligations and the varying conditions found in their respective enterprises, cannot be justified as consistent with due process." (Emphasis supplied.)

In the *Head Money* cases this Court sustained a Congressional Act levying on shipowners a fee of fifty cents for each foreign citizen brought by them into the United States, on the ground that the imposition was a valid ex-

ercise by Congress of its power to regulate immigration. The due process clause does not seem to have been mentioned or considered in the opinion. It was held that the exaction was not under the taxing power. We quote from the opinion:

> "But the true answer to all these objections is, that the power exercised in this instance is not the taxing power.
>
> • • • • • • •
>
> "The sum demanded of him is not, therefore, strictly speaking, a tax or duty within the meaning of the Constitution."

It has been held by this Court that no state has the right to take, without adequate compensation, the property of one person and give it to another. When property is taken without the owner's consent, it must be devoted to a public purpose. In this connection we call attention to the following excerpt from *Loan Association v. Topeka*, 20 Wall. 655, 22 L. Ed. 455:

> "The power to tax is, therefore, the strongest, the most pervading of all the powers of government reaching directly or indirectly to all classes of the people. It was said by Chief Justice Marshall, in the case of McCulloch v. Md., 4 Wheat. 431, that the power to tax is the power to destroy. A striking instance of the truth of the proposition is seen in the fact that the existing tax of ten per cent imposed by the United States on the circulation of all other banks than the National Banks, drove out of existence every state bank of circulation within a year or two after its passage. This power can as readily be employed against one class of individuals and in favor of another, so as to ruin the one class and give unlimited wealth and

prosperity to the other, if there is no implied limitation of the uses for which the power may be exercised.

"To lay, with one hand, the power of the government on the property of the citizen, and with the other to bestow it upon favored individuals to aid private enterprises and build up private fortunes, is none the less a robbery because it is done under the forms of law and is called taxation. This is not legislation. It is a decree under legislative forms."

In *Cole v. City of La Grange*, 113 U. S. 1, 28 L. Ed. 896, it was stated:

"The general grant of legislative power in the Constitution of a State does not enable the Legislature, in the exercise either of the right of eminent domain or of the right of taxation, to take private property, without the owner's consent, for any but a public object. Nor can the Legislature authorize counties, cities or towns to contract, for private objects, debts which must be paid by taxes. It cannot, therefore, authorize them to issue bonds to assist merchants or manufacturers, whether natural persons or corporations, in their private business. These limits of the legislative power are now too firmly established by judicial decisions to require extended argument upon the subject."

If a conglomerate mass of taxpayers can be forced to contribute to a fund to provide payments for a selected class who become unemployed, then it would appear that all citizens can be made to contribute for the benefit of all the unemployed, and this, regardless of the condition or state of circumstances of the beneficiaries of the grants. If such schemes are constitutional, we respectfully submit that under the same principle all persons acquiring mortgages and also the mortgagors, could be required to

contribute to a common fund to enable insolvent mortgagors to pay their indebtednesses.

The extent to which legislative power of this kind might be extended, if legal, is only limited by one's range of imagination.

An independent income to individuals, or to numbers of individuals, no doubt contributes to the welfare of the state and to its citizens, but this condition of affairs cannot be legally accomplished by the state by its forcibly taking property from some of its citizens and giving it to others, whether such taking is done in the form of taxes, police powers, or through other means.

POINT II.

Titles III and IX of the Federal Social Security Act are Violative of the Tenth Amendment.

While this case deals primarily with the State Act, yet the terms of the Act make it dependent upon the validity of Titles III and IX of the Federal Act. This dependency was recognized by the Alabama Supreme Court in its opinion in the *Beeland* case. We, therefore, think it appropriate to briefly discuss in this brief the constitutionality of the above mentioned sections of the Federal Act.

If the conclusion reached by the Alabama Supreme Court in the *Beeland* case is correct, then the matter of unemployment is one within the sphere of the State. This is certainly true insofar as unemployment arises out of intrastate relationships. It is elementary that the same power cannot exist in both the State and Federal Governments. The existence of power in one government negatives it in another.

In *Hammer v. Dagenhart*, 247 U. S. 251, 62 L. Ed. 1101, this Court stated the well established principle in the following language:

> "The maintenance of the authority of the states over matters purely local is as essential to the preservation of our institutions as is the conservation of the supremacy of the Federal power in all matters intrusted to the nation by the Federal Constitution.
>
> "In interpreting the Constitution it must never be forgotten that the nation is made up of states, to which are intrusted the powers of local government. And to them and to the people the powers not expressly delegated to the national government are reserved."

In *Bailey v. Drexel Furniture Company*, 259 U. S. 20, 66 L. Ed. 817, all the members of the Court, except Mr. Justice Clarke, were of the opinion that child labor within the states could not be regulated by penalties adopted by Congress in the guise of a tax. Mr. Chief Justice Taft said:

> "In the light of these features of the act, a court must be blind not to see that the so-called tax is imposed to stop the employment of children within the age limits prescribed. Its prohibitory and regulatory effect and purpose are palpable. All others can see and understand this. How can we properly shut our minds to it?
>
> "It is the high duty and function of this court in cases regularly brought to its bar to decline to recognize or enforce seeming laws of Congress, dealing with subjects not intrusted to Congress, but left or committed by the supreme law of the land to the control of the states. We cannot avoid the duty even though it require us to refuse to give effect to legislation designed to promote the highest good. The good

sought in unconstitutional legislation is an insidious feature because it leads citizens and legislators of good purpose to promote it without thought of the serious breach it will make in the ark of our covenant, or the harm which will come from breaking down recognized standards. In the maintenance of local self-government, on the one hand, and the national power, on the other, our country has been able to endure and prosper for near a century and a half."

The ingenious argument has been made that as the taxes levied in Title IX of the Federal Act are imposed under the general taxing powers of the United States, no one can question the validity of the exactions. It is further contended that as Title III deals only with appropriations, the constitutionality of these provisions cannot be attacked under the principles laid down in *Mass. v. Mellon*, 262 U. S. 447, 67 L. Ed. 1078. This argument wholly ignores the comprehensive plan and the results sought to be accomplished, all of which are plainly apparent upon even a casual examination of the provisions.

The 90% credit allowed on the Federal tax for payments made into a state unemployment fund under a state law is expressly conditioned upon the approval by the Federal Social Security Board of the state law in its entirety. There are many specific mandatory requirements to which the State Act must conform. The immediate turning over by the State to the Federal Government of all amounts collected under its statute is compulsory and is one of the prime requisites for the allowance of credit by its citizens on the Federal levy. Should the State later change its law so that it no longer, in the opinion of the Federal Board, contains the provisions specified in Section 903, or if the State officials fail to comply with the provisions of this section, the previous Federal approval of the

State Act is withdrawn. [Paragraph (b) of Section 903.]

Section 303 of the Act provides, among other things, that no part of the amounts appropriated in Title III shall be paid to any state which does not immediately pay all monies received in its unemployment fund to the Secretary of the Treasury, or if the Federal Board finds that the State agency charged with the enforcement of the State Act is failing to comply with the requirements specified in paragraph (a) of that section, no further payments are made to the State.

The pattern for the form and content of the State Act and the manner of its enforcement could not for all practical purposes have been more effectively accomplished if Congress had provided an exact model, from which no deviation was permitted. It is true the Federal Act requires no levy on employees for unemployment benefits, but that does not change or alter the dominant purpose of Congress that the States must tax the employers at the rate determined by Congress or else suffer the consequences of having large numbers of its citizens subjected to a penalty equivalent to nine-tenths of one per cent of their pay rolls.

Looking at the true situation as it existed after the passage of the Federal Act, can anyone seriously assert that the states were left to their free and untrammeled option as to whether they would adopt a standard unemployment insurance system to be administered under the supervision and control of Federal agencies? A state can very often be just as effectively coerced through pressure applied on the pocketbooks of its citizens as by bayonets.

This Court is not supposed to be blind to what everyone else knows. The purpose of the tax considered in the Child Labor Tax case, supra, was not any more clearly

manifested than is the dominant motive revealed by Titles III and IX. "The voice is Jacob's voice, but the hands are the hands of Esau."

The state evidently recognizes that from a practical point of view it has very little to do with the scheme of unemployment insurance, except to administer the minor details of the plan. The state agency officials are in effect merely provincial satraps. That Alabama is willing to throw the whole undertaking overboard if the Federal Act ceases to be operative is manifested by the provision that the Act shall cease to be effective if this Court finds the Federal measure unconstitutional.

The fact that the provision providing for the turning over of funds to the states for administering the scheme is contained in Title III and the provision for the Federal tax and the credits thereon is skipped to Title IX cannot operate to prevent a consideration of the respective provisions in conjunction with each other. Both provisions are contained in the same Act and are just as much related to each other as if numbered consecutively or, for that matter, if contained in separate acts. The coercive features of Title IX are, we respectfully submit, sufficient to render that part of the Act void if consideration of Title III is omitted or precluded. Title III only emphasizes the extent of the coercion exerted on the states.

Mr. Justice Roberts, speaking for this Court in *United States v. Butler*, 297 U. S. 1, 80 L. Ed. 447, said:

> "It is said that what the respondents are endeavoring to do is to challenge the intended use of the money pursuant to Congressional appropriation when, by confession, that money will have become the property of the Government and the taxpayer will no longer have any interest in it. Massachusetts v. Mellon, 262

U. S. 447, 67 L. ed. 1078, 43 S. Ct. 597, is claimed to foreclose litigation by the respondents or other taxpayers, as such, looking to restraint of the expenditure of government funds. That case might be an authority in the petitioners' favor if we were here concerned merely with a suit by a taxpayer to restrain the expenditure of the public moneys. It was there held that a taxpayer of the United States may not question expenditures from its treasury on the ground that the alleged unlawful diversion will deplete the public funds and thus increase the burden of future taxation. Obviously the asserted interest of a taxpayer in the federal government's funds and the supposed increase of the future burden of taxation are minute and indeterminable. But here the respondents who are called upon to pay moneys as taxes, resist the exaction as a step in an unauthorized plan. This circumstance clearly distinguishes the case. The Government in substance and effect asks us to separate the Agricultural Adjustment Act into two statutes, the one levying an excise on processors of certain commodities, the other appropriating the public moneys independently of the first. Passing the novel suggestion that two statutes enacted as parts of a single scheme should be tested as if they were distinct and unrelated, we think the legislation now before us is not susceptible of such separation and treatment."

We quote further from the opinion as follows:

"The power of taxation, which is expressly granted, may, of course, be adopted as a means to carry into operation another power also expressly granted. But resort to the taxing power to effectuate an end which is not legitimate, not within the scope of the Constitution, is obviously inadmissible.

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"In Linder v. United States, 268 U. S. 5, 69 L. ed. 819, 45 S. Ct. 446, 39 A. L. R. 229, supra, we held that the power to tax could not justify the regulation of the practice of a profession, under the pretext of raising revenue. In United States v. Constantine (decided December 9, 1935) (296 U. S. 287, ante, 233, 56 S. Ct. 223), we declared that Congress could not, in the guise of a tax, impose sanctions for violation of state law respecting the local sale of liquor. These decisions demonstrate that Congress could not, under the pretext of raising revenue, lay a tax on processors who refuse to pay a certain price for cotton and exempt those who agree so to do, with the purpose of benefiting producers."

In *Schechter v. United States*, 297 U. S. 495, 79 L. Ed. 1570, this Court said:

"Stress is laid upon the great importance of maintaining wage distributions which would provide the necessary stimulus in starting 'the cumulative forces making for expanding commercial activity.' Without in any way disparaging this motive, it is enough to say that the recuperative efforts of the Federal Government must be made in a manner consistent with the authority granted by the Constitution.

"We are of the opinion that the attempt through the provisions of the Code to fix the hours and wages of employes of defendants in their intrastate business was not a valid exercise of Federal power."

See also *Carter v. Carter Coal Company*, 298 U. S. 238, 80 L. Ed. 1160, and *Ashton v. Cameron County*, 298 U. S. 513, 80 L. Ed. 1309.

CONCLUSION.

Realizing the tremendous responsibility placed on this most Honorable Court, we, with great deference, submit

our views on the important issues involved in the litigation.

May we not respectfully submit that the reasoning adopted by the Privy Council in The Attorney General of Canada v. The Attorney General of Ontario and others, also applies with extraordinary force here?

Respectfully submitted,

JOHN S. COLEMAN,
WILLIAM B. WHITE,
Attorneys for Amici Curiae.

pp. 4, 16, 2 + 14

SUPREME COURT OF THE UNITED STATES.

Nos. 724, 797.—October Term, 1936.

Albert A. Carmichael, Individually and as Attorney General of the State of Alabama, et al., Appellants,
724 *vs.*
Southern Coal & Coke Company.

Albert A. Carmichael, Individually and as Attorney General of the State of Alabama, et al., Appellants,
797 *vs.*
Gulf States Paper Corporation.

Appeals from the District Court of the United States for the Middle District of Alabama.

[May 24, 1937.]

Mr. Justice Stone delivered the opinion of the Court.

The questions for decision are whether the Unemployment Compensation Act of Alabama infringes the due process and equal protection clauses of the Fourteenth Amendment, and whether it is invalid because its enactment was coerced by the action of the Federal government in adopting the Social Security Act, and because it involves an unconstitutional surrender to the national government of the sovereign power of the state.

Appellee, the Southern Coal & Coke Co., is a Delaware corporation employing more than eight persons in its business of coal mining in Alabama. Appellee, Gulf States Paper Corporation, is a Delaware corporation employing more than eight persons in its business of manufacturing paper within the state. They brought the present suits in the District Court for the Middle District of Alabama, to restrain appellants, the Attorney General and the Unemployment Compensation Commission of Alabama, from collecting the money contributions exacted of them by the provisions of the Alabama Unemployment Compensation Act. From the decrees of the district court, three judges sitting (Jud. Code, § 266, 28 U. S. C. § 380), granting the relief prayed, the case comes here on appeal. Jud. Code, § 238 (3), 28 U. S. C. § 345 (3).

§§ 7597 (1) et seq.

The Unemployment Compensation Act, Ala. Acts 1935, No. 447; Ala. Code of 1928 (1936 Cum. Supp.) [redacted], as amended by Acts of 1936, Nos. 156, 194, 195, and Acts of Feb. 10, 1937, and March 1, 1937, Spec. Sess. 1937, sets up a comprehensive scheme for providing unemployment benefits for workers employed within the state by employers designated by the Act. These employers include all who employ eight or more persons for twenty or more weeks in the year, § 2 (f), except those engaged in certain specified employments.[1] It imposes on the employers the obligation to pay a certain percentage of their total monthly payrolls into the state Unemployment Compensation Fund, administered by appellants. For 1936 the levy is .9 of 1%; for 1937 it is 1.8%, and for 1938 and subsequent years it is 2.7%. § 4 (b). In 1941 and thereafter the rates of contribution by employers are to be revised in accordance with experience, but in no case are they to be less than 1½ or more than 4% of the payroll. § 4 (c). After May 1, 1936, each employee is required to contribute 1% of his wages to the fund. § 4 (d). The fund is to be deposited in the "Unemployment Trust Fund" of the United States Government, § 3 (d), cf. Social Security Act, § 904 (a), and is to be used as requisitioned by the State Commission, to pay unemployment benefits prescribed by the statute, §§ 3 (b), 3 (d), but without any liability on the part of the state beyond amounts paid into or earned by the fund. Benefits are payable from the fund to the employees covered by the Act,

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[1] See § 2 (g). "Employment" is defined to exclude:
(1) Agricultural labor;
(2) Domestic service in a private home;
(3) Service performed as an officer, bar pilot, or member of the crew of a vessel on the navigable waters of the United States;
(4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;
(5) Service performed in the employ of the United States Government or of an instrumentality of the United States;
(6) Service performed in the employ of a carrier engaged in interstate commerce and subject to the Act of Congress known as The Railway Labor Act; as amended or as hereafter amended. Service performed by those engaged as solicitors or agents for Insurance Companies;
(7) Service performed in the employ of a state, or political subdivision thereof, or an instrumentality of one or more states or political subdivisions;
(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

in the event of their unemployment, upon prescribed conditions and at prescribed rates.

The Act satisfies the criteria which, by § 903 (a) of the Social Security Act of August 14, 1935, c. 531, 49 Stat. 620, 640, 42 U. S. C. §1103 (a), are made prerequisite to its approval by the Social Security Board created by that Act, and it has been approved by the Board as that section directs. By § 902 of the Social Security Act, contributors to the state fund are entitled to credit their contributions in satisfaction of the tax imposed on employers by the Social Security Act, to the extent of 90% of the tax. See No. 837, *Chas. C. Steward Machine Co.* v. *Davis*, decided this day.

In the court below, the statute was assailed as repugnant to various provisions of the state constitution. These contentions have been put at rest by the decision of the Supreme Court of Alabama in *Beeland Wholesale Company* v. *Kaufman*, — Ala. —, holding the state act valid under both the state and federal constitutions. The statute was also attacked on the ground that the Social Security Act is invalid under the Federal Constitution, since the state act declares that it "shall become void" if the Supreme Court of the United States shall hold the Social Security Act invalid. The Alabama court interpreted the statute as having operative effect only if the Social Security Act were constitutional—even in advance of a decision by this Court. We need not decide whether the state court's ruling that the federal statute is valid is conclusive upon us for the purpose of determining whether the state law is presently in force, *Miller's Executors* v. *Swann*, 150 U. S. 132; *Louisville & Nashville R. Co.* v. *Western Union Telegraph Co.*, 237 U. S. 300, because its conclusion as to the validity of the federal act agrees with our own, announced in *Chas. C. Steward Machine Co.* v. *Davis*, *supra*.

Attacks were leveled on the statute on numerous other grounds, which are urged here,—as an infringement of the due process and equal protection clauses of the Fourteenth Amendment, as an unconstitutional surrender to the United States government of the sovereign power of the state, and as a measure owing its passage to the coercive action of Congress in the enactment of the Social Security Act.

In *Beeland Wholesale Company* v. *Kaufman*, *supra*, the Supreme Court of Alabama held that the contributions which the statute

exacts of employers are excise taxes laid in conformity to the constitution and laws of the state. While the particular name which a state court or legislature may give to a money payment commanded by its statute is not controlling here when its constitutionality is in question, cf. *Educational Films Co.* v. *Ward*, 282 U. S. 379, 387; *Storaasli* v. *Minnesota*, 283 U. S. 57, 62; *Wagner* v. *City of Covington*, 251 U. S. 95, 102; *Standard Oil Co.* v. *Graves*, 249 U. S. 389, 394, we see no reason to doubt that the present statute is an exertion of the taxing power of the state. Cf. *Carley and Hamilton* v. *Snook*, 281 U. S. 66, 71.

Taxes, which are but the means of distributing the burden of the cost of government, are commonly levied on property or its use, but they may likewise be laid on the exercise of personal rights and privileges. As has been pointed out by the opinion in the *Chas C. Steward Machine Co.* case, such levies, including taxes on the exercise of the right to employ or to be employed, were known in England and the colonies before the adoption of the Constitution, and must be taken to be embraced within the wide range of choice of subjects of taxation, which was an attribute of the sovereign power of the states at the time of the adoption of the Constitution, and which was reserved to them by that instrument. As the present levy has all the indicia of a tax, and is of a type traditional in the history of Anglo-American legislation, it is within state taxing power, and it is immaterial whether it is called an excise or by another name. See *Barwise* v. *Sheppard*, 299 U. S. 33, 36. Its validity under the Federal Constitution is to be determined in the light of constitutional principles applicable to state taxation.

Validity of the Tax Under the Fourteenth Amendment.

First. Validity of the Tax Qua *Tax.* It is inherent in the exercise of the power to tax that a state be free to select the subjects of taxation and to grant exemptions. Neither due process nor equal protection imposes upon a state any rigid rule of equality of taxation. See *Bell's Gap R. Co.* v. *Pennsylvania*, 134 U. S. 232, 237; *Lawrence* v. *State Tax Commission*, 286 U. S. 276, 284. This Court has repeatedly held that inequalities which result from a singling out of one particular class for taxation or exemption, infringe no constitutional limitation. *Magoun* v. *Ill. Trust & Savings Bank*, 170 U. S. 283, 293; *American Sugar Refining Co.* v. *Louisiana*,

179 U. S. 89, 94; *Armour Packing Co.* v. *Lacy*, 200 U. S. 226, 235; *Brown-Forman Co.* v. *Kentucky*, 217 U. S. 563, 573; *Quong Wing* v. *Kirkendall*, 223 U. S. 59, 62, 63; *Armour & Co.* v. *Virginia*, 246 U. S. 1, 6; *Alaska Fish Co.* v. *Smith*, 255 U. S. 44, 48; *State Board of Tax Commissioners* v. *Jackson*, 283 U. S. 527, 537; *Broad River Power Co.* v. *Query*, 288 U. S. 178, 180; *Fox* v. *Standard Oil Co.*, 294 U. S. 87, 97; No. 649, *Cincinnati Soap Co.* v. *United States*, May 3, 1937; No. 652, *Great Atlantic & Pacific Tea Company* v. *Grosjean*, May 17, 1937.

Like considerations govern exemptions from the operation of a tax imposed on the members of a class. A legislature is not bound to tax every member of a class or none. It may make distinctions of degree having a rational basis, and when subjected to judicial scrutiny they must be presumed to rest on that basis if there is any conceivable state of facts which would support it. *Rast* v. *Van Deman & Lewis*, 240 U. S. 342, 357; *Heisler* v. *Thomas Colliery Co.*, 260 U. S. 245, 255; *Swiss Oil Corp.* v. *Shanks*, 273 U. S. 407, 413; *Lawrence* v. *State Tax Commission*, *supra*; cf. *Metropolitan Casualty Insurance Co.* v. *Brownell*, 294 U. S. 580, 584.

This restriction upon the judicial function, in passing on the constitutionality of statutes, is not artificial or irrational. A state legislature, in the enactment of laws, has the widest possible latitude within the limits of the Constitution. In the nature of the case it cannot record a complete catalogue of the considerations which move its members to enact laws. In the absence of such a record courts cannot assume that its action is capricious, or that, with its informed acquaintance with local conditions to which the legislation is to be applied, it was not aware of facts which afford reasonable basis for its action. Only by faithful adherence to this guiding principle of judicial review of legislation is it possible to preserve to the legislative branch its rightful independence and its ability to function.

(a) Exclusion of Employers of Less than Eight. Distinctions in degree, stated in terms of differences in number, have often been the target of attack, see *Booth* v. *Indiana*, 237 U. S. 391, 397. It is argued here, and it was ruled by the court below, that there can be no reason for a distinction, for purposes of taxation, between those who have only seven employees and those who have eight. Yet, this

is the type of distinction which the law is often called upon to make.[2] It is only a difference in numbers which marks the moment when day ends and night begins, when the disabilities of infancy terminate and the status of legal competency is assumed. It separates large incomes which are taxed from the smaller ones which are exempt, as it marks here the difference between the proprietors of larger businesses who are taxed and the proprietors of smaller businesses who are not.

Administrative convenience and expense in the collection or measurement of the tax are alone a sufficient justification for the difference between the treatment of small incomes or small taxpayers and that meted out to others. *Citizens' Telephone Co.* v. *Fuller*, 229 U. S. 322, 332; *Hatch* v. *Reardon*, 204 U. S. 152, 159; *New York* v. *Latrobe*, 279 U. S. 421, 428; *Aero Transit Co.* v. *Georgia Public Service Comm.*, 295 U. S. 285, 289. Cf. *Florida Central & Peninsular R. Co.* v. *Reynolds*, 183 U. S. 471, 480; *Packer Corp.* v. *Utah*, 285 U. S. 105, 110, footnote 6. We cannot say that the expense and inconvenience of collecting the tax from small employers would not be disproportionate to the revenue obtained. For it cannot be assumed that the legislature could not rightly have concluded that generally the number of employees bears a relationship to the size of the payroll and therefore to the amount of the tax, and that the large number of small employers and the paucity of their records of employment would entail greater inconvenience in the collection and verification of the tax than in the case of larger employers.

It would hardly be contended that the state, in order to tax payrolls, is bound to assume the administrative cost and burden of taxing all employers having a single employee. But if for that or any other reason it may exempt some, whether it should draw the line at one, three, or seven, is peculiarly a question for legislative decision. The decision cannot be said to be arbitrary because it falls in the twilight zone between those members of the class which plainly can and those which plainly cannot expediently be taxed.

[2] St. Louis Consol. Coal Co. *v.* Illinois, 185 U. S. 203, 207 (coal mines employing five or more subject to inspection); McLean *v.* Arkansas, 211 U. S. 539, 551 (mines employing ten or more required to measure coal for payment of wages before screening); Booth *v.* Indiana, 237 U. S. 391, 397 (mines required to supply wash-houses upon demand of twenty employees); Jeffrey Mfg. Co. *v.* Blagg, 235 U. S. 571, 576; Middleton *v.* Texas Power & L. Co., 249 U. S. 152, 159 (employers of five or more included within workmen's compensation act).

(b) Exemption of Particular Classes of Employers. It is arbitrary, appellees contend, to exempt those who employ agricultural laborers, domestic servants, seamen, insurance agents, or close relatives, or to exclude charitable institutions, interstate railways, or the government of the United States or of any state or political subdivision. A sufficient answer is an appeal to the principle of taxation already stated, that the state is free to select a particular class as a subject for taxation. The character of the exemptions suggests simply that the state has chosen, as the subject of its tax, those who employ labor in the processes of industrial production and distribution.

Reasons for the selections, if desired, readily suggest themselves. Where the public interest is served one business may be left untaxed and another taxed, in order to promote the one, *American Sugar Refining Co.* v. *Louisiana, supra; Heisler* v. *Thomas Colliery Co., supra; Aero Transit Co.* v. *Georgia Public Service Comm., supra,* or to restrict or suppress the other, *Magnano Company* v. *Hamilton,* 292 U. S. 40; *Fox* v. *Standard Oil Co., supra; Quong Wing* v. *Kirkendall, supra; Singer Sewing Machine Co.* v. *Brickell,* 233 U. S. 304; *Alaska Fish Co.* v. *Smith, supra,* 48; *Great Atlantic & Pacific Tea Company* v. *Grosjean, supra.* The legislature may withhold the burden of the tax in order to foster what it conceives to be a beneficient enterprise. This Court has often sustained the exemption of charitable institutions, *Bell's Gap R. Co.* v. *Pennsylvania,* supra, 237; cf. *Board of Education* v. *Illinois,* 203 U. S. 553, 563, and exemption for the encouragement of agriculture, *American Sugar Refining Co.* v. *Louisiana, supra,* 95; *Aero Transit Co.* v. *Georgia Public Service Comm., supra,* 291. Similarly, the legislature is free to aid a depressed industry such as shipping. The exemption of business operating for less than twenty weeks in the year may rest upon similar reasons, or upon the desire to encourage seasonal or unstable industries.

Administrative considerations may explain several exemptions. Relatively great expense and inconvenience of collection may justify the exemption from taxation of domestic employers, farmers, and family businesses, not likely to maintain adequate employment records, which are an important aid in the collection and verification of the tax. The state may reasonably waive the formality of taxing itself or its political subdivisions.

Fear of constitutional restrictions, and a wholesome respect for the proper policy of another sovereign, would explain exemption of the United States, and of the interstate railways, compare *Packer Corp.* v. *Utah, supra*, 109. In no case do appellees sustain the burden which rests upon them of showing that there are no differences, between the exempt employers and the industrial employers who are taxed, sufficient to justify differences in taxation.

(c) Tax on Employees. Appellees extend their attack on the statute from the tax imposed on them as employers to the tax imposed on employees. But they cannot object to a tax which they are not asked to pay, at least if it is separable, as we think it is, from the tax they must pay. The statute contains the usual separability clause. § 19. The taxation of employees is not prerequisite to enjoyment of the benefits of the Social Security Act. The collection and expenditure of the tax on employers do not depend upon taxing the employees, and we find nothing in the language of the statute or its application to suggest that the tax on employees is so essential to the operation of the statute as to restrict the effect of the separability clause. Distinct taxes imposed by a single statute are not to be deemed inseparable unless that conclusion is unavoidable. See *Field* v. *Clark*, 143 U. S. 649, 697; No. 614, *Sonzinsky* v. *United States*, March 29, 1937.

From what has been said, it is plain that the tax *qua* tax conforms to constitutional requirements, and that our inquiry as to its validity would end at this point if the proceeds of the tax were to be covered into the state treasury, and thus made subject to appropriation by the legislature.

Second. Validity of the Tax as Determined by Its Purposes. The devotion of the tax to the purposes specified by the Act requires our consideration of the objections pressed upon us that the tax is invalid because the purposes are invalid, and because the methods chosen for their execution transgress constitutional limitations. It is not denied that since the adoption of the Fourteenth Amendment state taxing power can be exerted only to effect a public purpose and does not embrace the raising of revenue for private purposes. See *Green* v. *Frazier*, 253 U. S. 233, 238; *Milheim* v. *Moffat Tunnel Dist.*, 262 U. S. 710, 717; *Fallbrook Irrigation Dist.* v. *Bradley*, 164 U. S. 112, 158; *Jones* v. *City of Portland*, 245 U. S. 217, 221. The states, by their constitutions and laws, may set their own

limits upon their spending power, see *Loan Association* v. *Topeka*, 20 Wall. 655; cf. *Parkersburg* v. *Brown*, 106 U. S. 487; *Cole* v. *La Grange*, 113 U. S. 1, but the requirements of due process leave free scope for the exercise of a wide legislative discretion in determining what expenditures will serve the public interest.

This Court has long and consistently recognized that the public purposes of a state, for which it may raise funds by taxation, embrace expenditures for its general welfare. *Fallbrook Irrigation Dist.* v. *Bradley, supra*, 161; *Green* v. *Frazier, supra*, 240, 241. The existence of local conditions which, because of their nature and extent, are of concern to the public as a whole, the modes of advancing the public interest by correcting them or avoiding their consequences, are peculiarly within the knowledge of the legislature, and to it, and not to the courts, is committed the duty and responsibility of making choice of the possible methods. See *Fallbrook Irrigation Dist* v. *Bradley, supra*, 160; *Jones* v. *City of Portland, supra*, 221, 224, 225; *Green* v. *Frazier, supra*, 239, 240. As with expenditures for the general welfare of the United States, *United States* v. *Butler*, 297 U. S. 1, 67; *Helvering et al* v. *Davis, supra*, whether the present expenditure serves a public purpose is a practical question addressed to the law-making department, and it would require a plain case of departure from every public purpose which could reasonably be conceived to justify the intervention of a court. See *Cincinnati Soap Co.* v. *United States, supra;* cf. *Jones* v. *City of Portland, supra*. The present case exhibits no such departure.

(a) Relief of Unemployment as a Public Purpose. Support of the poor has long been recognized as a public purpose, see *Kelly* v. *Pittsburgh*, 104 U. S. 78, 81. We need not labor the point that expenditures for the relief of the unemployed, conditioned on unemployment alone, without proof of indigence of recipients of the benefits, is a permissible use of state funds. For the past six years the nation, unhappily, has been placed in a position to learn at first hand the nature and extent of the problem of unemployment, and to appreciate its profound influence upon the public welfare. Detailed accounts of the problem and its social and economic consequences, to be found in public reports of the expenditures of relief funds, and in the studies of many observers, afford a basis for the legislative judgment. It suffices to say that they show that unemployment apparently has become a permanent

incident of our industrial system; that it varies, in extent and intensity, with fluctuations in the volume of seasonal businesses and with the business cycle. It is dependent, with special and unpredictable manifestations, upon technological changes and advances in methods of manufacture, upon changing demands for manufactured products—dictated by changes in fashion or the creation of desirable substitutes, and upon the establishment of new sources of competition.

The evils of the attendant social and economic wastage permeate the entire social structure. Apart from poverty, or a less extreme impairment of the savings which afford the chief protection to the working class against old age and the hazards of illness, a matter of inestimable consequence to society as a whole, and apart from the loss of purchasing power, the legislature could have concluded that unemployment brings in its wake increase in vagrancy and crimes against property,[3] reduction in the number of marriages,[4] deterioration of family life, decline in the birth rate,[5] increase in illegitimate births,[6] impairment of the health of the unemployed and their families[7] and malnutrition of their children.[8]

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[3] See, e. g., National Commission on Law Observance and Enforcement (1931), Report on the Causes of Crime, No. 13, especially p. 312.

[4] From 1924 to 1932, inclusive, the marriage rate in Alabama, determined by marriages per 1,000 population, was as follows: 11.4; 11.9; 11.9; 11.6; 11.2; 11.2; 10.4; 9.7; 9.4 [derived from Statistical Abstract of the United States, 1926, Table 90; *id.*, 1928, Table 95; *id.*, 1930, Table 99; *id.*, 1932, Table 80; *id.*, 1936, Table 92]. The first sizeable decline came in 1930.

[5] See State Board of Health, Bureau of Vital Statistics, Report relating to the registration of births and deaths in the State of Alabama for the year ending 31st December, 1935, p. XXXVII: "Between 1910 and 1927, the trend in the birth rate was upward, except in 1918, the year in which the outbreak of influenza occurred and the following year. From 1927 to 1935, the trend has been downward, the rate of decline having been practically constant since 1928 forward, with the single exception in 1934. The rise in 1934 was due to a number of factors, including an increase in birth registration following the registration campaign and marriages."

[6] See Annual Report of the State Board of Health of Alabama, 1933, p. 166, Table XXV. The rate of illegitimate births per 1,000 live births, for the years 1929 through 1933, were 70.4; 74.6; 81.6; 88.7; 95.1.

[7] A survey of 4,137 people in Birmingham, Alabama, and covering three months in the spring of 1933, showed that the rate of illness [disabling illness per 1,000 persons] was 165 in families with no employed workers; 148 in families with at least one part-time worker, but no full-time workers; and 140 in families with at least one full-time worker. See Perrott and Collins, Relation of sickness to income and income change in 10 surveyed communities, Public Health Reports (United States Public Health Service), vol. 50, p. 595, at 606, Table 6.

[8] See Eliot, Martha M., Some effects of the depression on the nutrition of children, Hospital Social Service, vol. 28, p. 585; Palmer, Carroll E., Height

Although employment in Alabama is predominantly in agriculture, and the court below found that agricultural unemployment is not an acute problem, the census reports disclose the steadily increasing percentage of those employed in industrial pursuits in Alabama.[9] The total amount spent for emergency relief in Alabama, in the years 1933 to 1935 inclusive, exceeded $47,000,000, of which $312,000 came from state funds, $2,243,000 from local sources and the balance from relief funds of the federal government.[10] These figures bear eloquent witness to the inability of local agencies to cope with the problem without state action and resort to new taxing legislation. Expenditure of public funds under the present statute, for relief of unemployment, will afford some protection to a substantial group of employees,[11] and we cannot say that it is not for a public purpose.

The end being legitimate, the means is for the legislature to choose. When public evils ensue from individual misfortunes or needs, the legislature may strike at the evil at its source. If the purpose is legitimate because public, it will not be defeated because the execution of it involves payments to individuals. *Kelly* v. *Pittsburgh, supra; Knights* v. *Jackson*, 260 U. S. 12, 15; *cf. Mountain Timber Co.* v. *Washington*, 243 U. S. 219, 239-240. "Individual interests are aided only as the common interest is safeguarded." See *Cochran* v. *Louisiana State Board of Education*, 281 U. S.

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and weight of children of the depression poor, Public Health Reports, vol. 50, p. 1106.

[9] Of those employed in Alabama the per cent. employed in industry were 19.5% in 1900; 21.4% in 1910; 30.7% in 1920; 33.6% in 1930; 24.3% in 1935. (Last figure estimated at the trial by Gist, formerly statistician of the Department of Agriculture, and since Feb. 1, 1936, economic adviser to the Commissioner of Agriculture of Alabama.) The decline in 1935 may be taken to corroborate the greater susceptibility of employment in industry to the depression.

[10] Figures obtained from Federal Emergency Relief Administration, as stated in Appendix to the Brief of Respondent, No. 837, Chas. C. Steward Machine Co. v. Davis, pp. 74-75, Table 17.

[11] Appellees point to an estimate that, largely because of the large agricultural population, only 26.81% of those employed in Alabama as of October 14, 1936, were covered by the Act.

But it was estimated at the trial by Gist [formerly statistician of the Department of Agriculture, and since Feb. 1, 1936, economic adviser to the Commissioner of Agriculture of Alabama], that if in 1941 there should be a recurrence of unemployment "somewhat equivalent to the period we have just come through, and employment in the industrial groups under consideration should drop to, say 170,000 [approximately the number employed in 1932], we would find Alabama with something like 64,000 unemployed persons who would be entitled to the benefits of this Act."

370, 375; cf. *Clark* v. *Nash*, 198 U. S. 361, 367; *Hairston* v. *Danville & Western Ry. Co.*, 208 U. S. 598, 608; *Noble State Bank* v. *Haskell*, 219 U. S. 104, 110.

(b) Extension of Benefits. The present scheme of unemployment relief is not subject to any constitutional infirmity, as respondents argue, because it is not limited to the indigent or because it is extended to some less deserving than others, such as those discharged for misconduct. While we may assume that the state could have limited its award of unemployment benefits to the indigent and to those who had not been rightfully discharged from their employment, it was not bound to do so. Poverty is one, but not the only evil consequence of unemployment. Among the benefits sought by relief is the avoidance of destitution, and of the gathering cloud of evils which beset the worker, his family and the community after wages cease and before destitution beigns. We are not unaware that industrial workers are not an affluent class, and we cannot say that a scheme for the award of unemployment benefits, to be made only after a substantial "waiting period" of unemployment, and then only to the extent of half wages and not more than $15 a week for at most 16 weeks a year, does not effect a public purpose, because it does not also set up an elaborate machinery for excluding those from its benefits who are not indigent. Moreover, the state could rightfully decide not to discourage thrift. *Mountain Timber Co.* v. *Washington, supra*, 240. And as the injurious effects of unemployment are not limited to the unemployed worker, there is scope for legislation to mitigate those effects, even though unemployment results from his discharge for cause.

(c) Restriction of Benefits. Appellees again challenge the tax by attacking as arbitrary the classification adopted by the legislature for the distribution of unemployment benefits. Only the employees of those subject to the tax share in the benefits. Appellees complain that the relief is withheld from many as deserving as those who receive benefits. The choice of beneficiaries, like the selection of the subjects of the tax, is thus said to be so arbitrary and discriminatory as to infringe the Fourteenth Amendment and deprive the statute of any public purpose.

What we have said as to the validity of the choice of the subjects of the tax is applicable in large measure to the choice of beneficiaries of the relief. In establishing a system of unemployment benefits

the legislature is not bound to occupy the whole field. It may strike at the evil where it is most felt, *Otis* v. *Parker*, 187 U. S. 606, 610; *Carroll* v. *Greenwich Insurance Co.*, 199 U. S. 401, 411; *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61, 81; *Central Lumber Co.* v. *South Dakota*, 226 U. S. 157, 160; *Rosenthal* v. *New York*, 226 U. S. 260, 270; *Patsone* v. *Pennsylvania*, 232 U. S. 138, 144; *Keokee Coke Co.* v. *Taylor*, 234 U. S. 224, 227; *Silver* v. *Silver*, 280 U. S. 117, 123; *Hardware Dealers Mutual Fire Ins. Co.* v. *Glidden Co.*, 284 U. S. 151, 159, or where it is most practicable to deal with it, *Dominion Hotel, Inc.* v. *Arizona*, 249 U. S. 265, 268-269. It may exclude others whose need is less, *N. Y., N. H. & Hartford R. Co.* v. *New York*, 165 U. S. 628, 634; *St. Louis Consol. Coal Co.* v. *Illinois*, 185 U. S. 203, 208; *Engel* v. *O'Malley*, 219 U. S. 128, 138; *N. Y. Central R. Co.* v. *White*, 243 U. S. 188, 208; *Radice* v. *New York*, 264 U. S. 292, 294; No. 293, *West Coast Hotel Co.* v. *Parrish*, March 29, 1937, or whose effective aid is attended by inconvenience which is greater, *Dominion Hotel, Inc.* v. *Arizona*, *supra*; *Atlantic Coast Line R. Co.* v. *State*, 135 Ga. 545, at 555-556, as affirmed and approved, *Atlantic Coast Line R. Co.* v. *Georgia*, 234 U. S. 280, 289.

As we cannot say that these considerations did not lead to the selection of the classes of employees entitled to unemployment benefits, and as a state of facts may reasonably be conceived which would support the selection, its constitutionality must be sustained. There is a basis, on grounds of administrative convenience and expense, for adopting a classification which would permit the use of records, kept by the taxpayer and open to the tax gatherer, as an aid to the administration of benefit awards, as is the case here, where the recipients of benefits are selected from the employees of those who pay the tax. Special complaint is made of the discrimination against those with only six co-workers, as contrasted with those who have more. We have already shown that a distinction in terms of the number of employees is not on its face invalid.[12] Here the legislative choice finds support in the conclusion reached by students of the problem,[13] that unem-

[12] See *supra*, footnote 2.

[13] W. I. King, Employment Hours and Earnings in Prosperity and Depression; Hansen, Bjornaraa, and Sogge, Decline of employment in the 1930-1931 depression in St. Paul, Minneapolis and Duluth, U. of Minn., Employment Stabilization Research Institute, vol. 1, No. 5, p. 20-25.

ployment is less likely to occur in businesses having a small number of employees.

Third. Want of Relationship Between the Subjects and Benefits of the Tax. It is not a valid objection to the present tax, conforming in other respects to the Fourteenth Amendment, and devoted to a public purpose, that the benefits paid and the persons to whom they are paid are unrelated to the persons taxed and the amount of the tax which they pay—in short, that those who pay the tax may not have contributed to the unemployment and may not be benefited by the expenditure. Appellees' contention that the statute is arbitrary, in so far as it fails to distinguish between the employer with a low unemployment experience and the employer with a high unemployment experience, rests upon the misconception that there must be such a relationship between the subject of the tax (the exercise of the right to employ) and the evil to be met by the appropriation of the proceeds (unemployment). We have recently stated the applicable doctrine. "But if the tax, *qua* tax, be good, as we hold it is, and the purpose specified be one which would sustain a subsequent and separate appropriation made out of the general funds of the Treasury, neither is made invalid by being bound to the other in the same act of legislation." *Cincinnati Soap Co.* v. *United States, supra.* Nothing is more familiar in taxation than the imposition of a tax upon a class or upon individuals who enjoy no direct benefit from its expenditure, and who are not responsible for the condition to be remedied.[14]

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[14] Cigarette and tobacco taxes are earmarked, in some states, for school funds and educational purposes, Ala. Acts 1927, No. 163, §§ 2 (j), (k); Acts 1932, No. 113, § 15; Ark. Acts 1933, Nos. 135, 140, § 2; Tenn. Code (1932), § 1242; Tex. Laws 1935, c. 241, § 3, and in Georgia for pensions for Confederate soldiers, Ga. Laws 1923, pp. 39, 41.

Liquor license fees and taxes are paid into old age pension funds, Colo. Laws 1933, Sp. Sess., c. 12, § 27; police pension funds, N. Y. Tax Law (1934) §§ 4, 4-a; and school funds, N. M. Laws 1933, c. 159, § 10 (b); Wis. Laws Sp. Sess. 1933-34, chs. 3, 14.

Chain store taxes are sometimes earmarked for school funds, Ala. Acts 1935, No. 194, § 348, schedule 155.9; Fla. Laws 1935, c. 16848, § 15; Idaho Laws 1933, c. 113, § 10.

License and pari-mutuel taxes in states authorizing horse racing are devoted to fairs and agricultural purposes, Cal. Stat. 1933, c. 769, § 13; Ill. Rev. Stat. (Cahill, 1933) c. 38, § 316 (6); Mich. Acts 1933, No. 199, § 10; to highway funds, Nev. Comp. Laws (Hillyer, 1929) § 6223; and to an old age pension fund in Washington, Laws 1933, c. 55, § 9.

Unemployment relief, though financed in most states by special bond issues, has in some instances been financed by Gasoline Taxes, Ohio Laws 1933, File

A tax is not an assessment of benefits. It is, as we have said, a means of distributing the burden of the cost of government. The only benefit to which the taxpayer is constitutionally entitled is that derived from his enjoyment of the privileges of living in an organized society, established and safeguarded by the devotion of taxes to public purposes. See *Cincinnati Soap Co.* v. *United States, supra.* Any other view would preclude the levying of taxes except as they are used to compensate for the burden on those who pay them, and would involve the abandonment of the most fundamental principle of government—that it exists primarily to provide for the common good. A corporation cannot object to the use of the taxes which it pays for the maintenance of schools because it has no children. *Thomas* v. *Gay*, 169 U. S. 264, 280. This Court has repudiated the suggestion, whenever made, that the Constitution requires the benefits derived from the expenditure of public moneys to be apportioned to the burdens of the taxpayer, or that he can resist the payment of the tax because it is not expended for purposes which are peculiarly beneficial to him.[15] *Cincinnati Soap Co.* v. *United States, supra; Carley & Hamilton* v. *Snook, supra*, 72; *Nashville, C. & St. L. R. Co.* v. *Wallace*, 288 U. S. 249, 268; see *Union Transit Co.* v. *Kentucky*, 199 U. S. 194, 203.

Even if a legislature should undertake, what the Constitution does not require, to place the burden of a tax for unemployment benefits upon those who cause or contribute to unemployment, it might conclude that the burden cannot justly be apportioned among employers according to their unemployment experience. Unemployment

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No. 8, §§ 1, 2; File No. 28; Okla. Laws 1931, c. 66, article 10, §§ 2, 3; Sales Taxes, Ill. Laws 1933, pp. 924, 926; Mich. Acts 1933, No. 167, §25 (b); Utah Laws 1933, c. 63, § 21; Income Taxes, Wis. Laws 1933, c. 363, § 2; Miscellaneous Excise Taxes, Ohio Gen. Code (Page Supp. 1935) § 6212-49 (beer); § 5543-2 (cosmetics); § 5544-2 (admissions); Utah Rev. Stat. §46-0-47 (beer).

[15] Similarly, special taxing districts for the maintenance of roads or public improvements within the district have been sustained, without proof of the nature or amount of special benefits. See St. Louis & S. W. Ry. Co. *v.* Mattin, 277 U. S. 157, 159; Memphis & Chicago Ry. Co. *v.* Pace, 282 U. S. 241, 248, 249; cf. Missouri Pacific R. Co. *v.* Western Crawford Road Dist., 266 U. S. 187. A different question is presented when a state undertakes to levy local assessments apportioned to local benefits. In that case, if it fails to conform to the standard of apportionment adopted, its action is arbitrary, see Georgia Ry. & Elec. Co. *v.* Decatur, 295 U. S. 165, 170, because there is a denial of equal protection. Road Improvement Dist. *v.* Missouri Pacific R. Co., 274 U. S. 188, 191-194; cf. Georgia Ry. & Elec. Co. *v.* Decatur, 297 U. S. 620. But if the assessment is apportioned to benefits it is not constitutionally defective because the assessment exceeds the benefits. Roberts *v.* Richland Irrigation Dist., 289 U. S. 71, 75.

in the plant of one employer may be due to competition with another, within or without the state, whose factory is running to capacity; or to tariffs, inventions, changes in fashions or in market or business conditions, for which no employer is responsible, but which may stimulate the business of one and impair or even destroy that of another. Many believe that the responsibility for the business cycle, the chief cause of unemployment, cannot be apportioned to individual employers in accordance with their employment experience; that a business may be least responsible for the depression from which it suffers the most.

The Alabama legislature may have proceeded upon the view, for which there is abundant authority, that the causes of unemployment are too complex to admit of a meticulous appraisal of employer responsibility.[16] It may have concluded that unemployment is an inseparable incident of modern industry, with its most serious manifestations in industrial production; that employees will be best protected, and that the cost of the remedy, at least until more accurate and complete data are available, may best be distributed, by imposing the tax evenly upon all industrial production,[17] and in such form that it will be added to labor costs which are ultimately absorbed by the public in the prices which it pays for consumable goods.

If the question were ours to decide, we could not say that the legislature, in adopting the present scheme rather than another, had no basis for its choice, or was arbitrary or unreasonable in its action. But, as the state is free to distribute the burden of a tax without regard to the particular purpose for which it is to be used, there is no warrant in the Constitution for setting the tax aside because a court thinks that it could have drawn a better statute or could have distributed the burden more wisely. Those are functions reserved for the legislature.

Since the appellees may not complain if the expenditure has no relation to the taxed class of which they are members, they ob-

[16] Report of President Hoover's Committee on Recent Social Trends; J. M. Clark, Economics of Overhead Costs (1929) pp. 366-367; Douglas, Hitchcock, and Atkins, The Worker in Modern Economic Society (1925) p. 491 *et seq.*; Beveridge, Unemployment, a Problem of Industry (1930) pp. 100-103; W. C. Mitchell, Business Cycles; the problem and its setting (1927) pp. 87, 210, 238.

[17] See E. M. Burns, Toward Social Security (1936) pp. 70-73; P. Douglas, Social Security in the United States (1936) pp. 253-355; A. Epstein, Insecurity—A Challenge to America (3d ed. 1936) pp. 311-312, 317; Hansen, Murray, Stevenson, and Stewart, A Program for Unemployment Insurance and Relief in the United States (1934) pp. 16, 65-73.

(1933) 807 ff;

viously may not complain because the expenditure has *some* relation to that class, that those benefited are employees of those taxed; or because the legislature has adopted the expedient of spreading the burden of the tax to the consuming public by imposing it upon those who make and sell commodities. It is irrelevant to the permissible exercise of the power to tax that some pay the tax who have not occasioned its expenditure, or that in the course of the use of its proceeds for a public purpose the legislature has benefited individuals, who may or may not be related to those who are taxed.

Relationship of the State and Federal Statutes.

There remain for consideration the contentions that the state act is invalid because its enactment was coerced by the adoption of the Social Security Act, and that it involves an unconstitutional surrender of state power. Even though it be assumed that the exercise of a sovereign power by a state, in other respects valid, may be rendered invalid because of the coercive effect of a federal statute enacted in the exercise of a power granted to the national government, such coercion is lacking here. It is unnecessary to repeat now those considerations which have led to our decision in the *Chas C. Steward Machine Co.* case, that the Social Security Act has no such coercive effect. As the Social Security Act is not coercive in its operation, the Unemployment Compensation Act cannot be set aside as an unconstitutional product of coercion. The United States and the State of Alabama are not alien governments. They coexist within the same territory. Unemployment within it is their common concern. Together the two statutes now before us embody a cooperative legislative effort by state and national governments, for carrying out a public purpose common to both, which neither could fully achieve without the cooperation of the other. The Constitution does not prohibit such cooperation.

As the state legislation is not the product of a prohibited coercion, there is little else to which appellees can point as indicating a surrender of state sovereignty. As the opinion in the *Chas C. Steward Machine Co.* case points out, full liberty of action is secured to the state by both statutes. The unemployment compensation fund is administered in accordance with state law by the state commission. The statute may be repealed at the will of the legislature, and in that case the state will be free to withdraw at any

time its unexpended share of the Unemployment Trust Fund from the treasury of the United States, and to use it for any public purpose. And, for the reasons stated in the opinion in the *Chas. C. Steward Machine Co.* case, we conclude that the deposit by the state of its compensation fund in the Unemployment Trust Fund involves no more of a surrender of sovereignty than does the choice of any other depository for state funds. The power to contract and the power to select appropriate agencies and instrumentalities for the execution of state policy are attributes of state sovereignty. They are not lost by their exercise.

Many other arguments are pressed upon us. They require no discussion save as their answer is implicit in what we have said. The state compensation act, on its face, and as applied to appellees, is subject to no constitutional infirmity, and the decree below is

Reversed.

Mr. Justice McReynolds thinks that the decree should be affirmed.

SUPREME COURT OF THE UNITED STATES.

Nos. 724, 797.—October Term, 1936.

Albert A. Carmichael, Individually and as Attorney General of the State of Alabama, et al., Appellants,
724 *vs.*
Southern Coal & Coke Company.

Albert A. Carmichael, Individually and as Attorney General of the State of Alabama, et al., Appellants,
797 *vs.*
Gulf States Paper Corporation.

Appeals from the District Court of the United States for the Middle District of Alabama.

[May 24, 1937.]

Mr. Justice Sutherland, dissenting.

The objective sought by the Alabama statute here in question, namely, the relief of unemployment, I do not doubt is one within the constitutional power of the state. But it is an objective which must be attained by legislation which does not violate the due process or the equal-protection clause of the Fourteenth Amendment. This statute, in my opinion, does both, although it would have been a comparatively simple matter for the legislature to avoid both.

The statute lays a payroll tax upon employers, the proceeds of which go into a common fund to be distributed for the relief of such ex-employees, coming within the provisions of the statute, as shall have lost their employment in any of a designated variety of industries within the state. Some of these employers are engaged in industries where work continues the year round. Others are engaged in seasonal occupations, where the work is discontinued for a part of the year. Some of the employers are engaged in industries where the number of men employed remains stable, or fairly so, while others are engaged in industries where the number of the men employed fluctuates greatly from time to time. Plainly, a disproportionately heavy burden will be imposed by the tax upon those whose operations contribute *least* to the evils of unemploy-

ment, and, correspondingly, the burden will be lessened in respect of those whose operations contribute *most*.

An example will make this clear. Let us suppose that A, an employer of a thousand men, has retained all of his employees. B, an employer of a thousand men, has discharged half of his employees. The tax is upon the payroll of each. A, who has not discharged a single workman, is taxed upon his payroll twice as much as B, although the operation of B's establishment has contributed enormously to the evil of unemployment while that of A has contributed nothing at all. It thus results that the employer who has kept all his men at work pays twice as much toward the relief of the employees discharged by B as B himself pays. Moreover, when we consider the large number and the many kinds of industries, their differing characteristics and the varied circumstances by which their operations are conditioned, the gross unfairness of this unequal burden of the tax becomes plain beyond peradventure. It is the same unfairness, in an aggravated form, as that which we so recently condemned as fatally arbitrary in *Railroad Retirement Board* v. *Alton R. Co.*, 295 U. S. 330. That case dealt with a federal statute which established a pension plan requiring payments to be made by all interstate railroad carriers into a pooled fund to be used for the payment of annuities indiscriminately to railroad employees, of whatever company, when they had reached the age of 65 years. This court, because of this pooling feature, among other things, held the act to be bad. We said (p. 357)—

"This court has repeatedly had occasion to say that the railroads, though their property be dedicated to the public use, remain the private property of their owners, and that their assets may not be taken without just compensation. The carriers have not ceased to be privately operated and privately owned, however much subject to regulation in the interest of interstate commerce. There is no warrant for taking the property or money of one and transferring it to another without compensation, whether the object of the transfer be to build up the equipment of the transferee or to pension its employees. . . . The argument is that since the railroads and the public have a common interest in the efficient performance of the whole transportation chain, it is proper and necessary to require all carriers to contribute to the cost of a plan designed to serve this end. It is said that the pooling principle is desirable because there are many small carriers whose employees

are too few to justify maintenance of a separate retirement plan for each." In support of that view, several cases had been cited. Those cases were reviewed and distinguished, and we concluded, p. 360, "that the provisions of the Act which disregard the private and separate ownership of the several respondents, treat them all as a single employer, and pool all their assets regardless of their individual obligations and the varying conditions found in their respective enterprises, cannot be justified as consistent with due process."

Cases which are relied upon here to sustain the Alabama statute were relied upon there to sustain the Retirement Act, *Mountain Timber Co.* v. *Washington*, 243 U. S. 219, among others. That case dealt with the State of Washington workmen's compensation act, requiring designated payments to be made by employers into a state fund for compensating injured workmen. But we pointed out (295 U. S. 359) that although the payments were made into a common fund, accounts were to be kept with each industry in accordance with the classification, and no class was to be liable for the depletion of the fund by reason of accidents happening in another class. And we said, "The Railroad Retirement Act, on the contrary, makes no classification, but, as above said, treats all the carriers as a single employer, irrespective of their several conditions."

If the Alabama act had followed the plan of the Washington act in respect of classification, we should have a very different question to consider. The vice of the Alabama act is precisely that which was condemned in the *Railroad Retirement Board* case. Indeed, the vice is more pronounced, since the federal act, relating as it did to railroads only, dealt with a homogeneous group of employers, while the Alabama act seeks to impose the character of "a single employer" upon a large number of employers severally engaged in entirely dissimilar industries.

It must be borne in mind that we are not dealing with a general tax, the proceeds of which are to be appropriated for any public purpose which the legislature thereafter may select, but with a tax expressly levied for a specified purpose. The tax and the use of the tax are inseparably united; and if the proposed use contravenes the Constitution, it necessarily follows that the tax does the same. *Cincinnati Soap Co.* v. *United States*, — U. S. —; — (May 3, 1937).

Other states have not found it impossible to adjust their unemployment laws to meet the constitutional difficulties thus presented by the Alabama act. The pioneer among these states is Wisconsin. That state provides (Act of January 29, 1932, c. 20, Laws of Wisc., Spec. Sess., 1931, p. 57, as amended) that while the proceeds of the tax shall be paid into a common fund, an account shall be kept with each individual employer, to which account his payments are to be credited and against which only the amounts paid to his former employees are to be charged. If he maintains his roll of employees intact, he will be charged nothing, and in any event only to the extent that his employment roll is diminished. When his tax contributions have reached a certain percentage of his payroll, the amount of his tax is reduced, and when they reach 10%, the tax is discontinued as long as that percentage remains. The result is that each employer bears his own burdens, and not those of his competitor or of other employers. The difference between the Wisconsin and the Alabama acts is thus succinctly stated by the Social Security Board in its Informational Service Circular No. 5, issued November, 1936, pp. 8-9:

"(1) The plan for individual employer accounts provides for employer-reserve accounts in the State fund. Each employer's contributions are credited to his separate account, and benefits are paid from his account only to his former employees. If he is able to build up a specified reserve in his account, his contribution rate is reduced."

Such is the Wisconsin plan; while under the Alabama statute—

"(2) The pooled-fund plan provides for a pooling of all contributions in a single undivided fund from which benefits are paid to eligible employees, irrespective of their former employers."

Which of these plans is more advantageous from a purely economic standpoint does not present a judicial question. But from the constitutional point of view, in so far as it involves the ground upon which I think the Alabama act should be condemned, I entertain no doubt that the Wisconsin plan is so fair, reasonable and just as to make plain its constitutional validity; and that the Alabama statute, like the New York statute involved in *Chamberlin, Inc.* v. *Andrews, et al.*, 299 U. S. 515, affirmed by an equally-divided court during the present term, is so arbitrary as to result in a denial both of due process and equal protection of the laws.

I am authorized to say that Mr. Justice VAN DEVANTER and Mr. Justice BUTLER concur in this opinion.